

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendment and Compilation of Chapter 13-5  
Hawaii Administrative Rules

October 14, 2022

1. Chapter 13-5, Hawaii Administrative Rules,  
entitled "Conservation District," is proposed to be amended  
as follows:

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 1 ADMINISTRATION

CHAPTER 5

CONSERVATION DISTRICT

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**Historical Note:** This chapter is based  
substantially upon chapter 13-2. [Eff 6/22/81; am and  
comp 12/27/90; comp 12/5/91; am and comp 12/31/92; R  
07/01/94]

#### SUBCHAPTER 1

#### GENERAL PROVISIONS

**§13-5-1 Purpose.** The purpose of this chapter is to regulate land[-]use in the conservation district for the purpose of conserving, protecting, and preserving the important natural and cultural resources of the State through appropriate management and use to promote their long-term sustainability and the public health[7] and safety [~~7~~and welfare]. [Eff 12/12/94; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-1)

**§13-5-2 Definitions.** As used herein unless otherwise provided:

"Accessory use" means a land use that is conducted on the same property as the principal land use, and is incidental to, subordinate to, and customarily found in connection with the principal land use.

"Aquaculture" means the cultivation and production of aquatic life in a controlled salt, brackish, or freshwater environment.

"Artificial reef" means an area of the sea where objects have been placed on the ocean bottom to create a habitat for fish and other marine organisms.

"Average annual [~~coastal erosion~~] shoreline change rate" means the average annual rate of shoreline change as determined by [~~the~~] a historical shoreline change [~~coastal erosion~~] study performed under this chapter.

"Beach" means a coastal landform primarily composed of sand that is established and shaped by wave action and tidal processes. "Beach" includes sand deposits in nearshore submerged areas, or sand dunes or upland beach deposits landward of the shoreline.

"Board" means the board of land and natural resources.

"Board permit" means a permit approved by the board of land and natural resources.

"Cabin" means a permanent structure not more than six hundred square feet under roof, intended for use in managing large or remote land areas or both; having access by existing foot trail or unimproved access roads. The cabin cannot be used as a principal residence, for rental, or any commercial purposes.

"Chairperson" means the chairperson of the board of land and natural resources.

"Clearing" means the removal of vegetation, with no ground disturbance.

~~["Coastal erosion study"]~~ "Historical shoreline change study" means a quantitative study of historical shoreline behavior utilizing orthorectified aerial photographs, ~~[or]~~ other imagery (e.g., drone, satellite, etc.), maps, or other accurate indicators of past shoreline position to carry out a high-resolution [mapping] analysis of historical shoreline positions to ~~[obtain a statistically valid annual erosion rate of the shoreline change reference feature]~~ determine the annual rate of historical shoreline change. The ~~[coastal erosion]~~ historical shoreline change study shall be carried out by a qualified professional consultant following procedures described in the Hawaii Coastal Hazard Mitigation Guidebook, or other credible publications that provide similar procedures.

"Coastal hazards" means elevated risk to public health or safety, property, and the environment in coastal areas resulting from physical phenomena (e.g. high waves, storm surge, tsunamis, sea level rise, coastal erosion, and other hazards).

"Coastal hazard mitigation disclosure statement" means a disclosure statement that identifies and describes the potential frequency and severity of coastal hazards that may impact property with a discussion of potential measures that can taken to mitigate impacts from coastal hazards.

"Coastal high hazard area" means an area where wave action or high velocity water flow or both can cause structural damage in the ~~[hundred-year flood]~~ one per cent annual chance flood event, primarily defined as an area where a three foot or greater wave height could occur (~~[VE]~~ Zone V), in accordance with the Federal Emergency Management Agency-designated ~~[federal]~~ flood insurance rate map flood zones.

"Commercial purpose" means those land uses which entail or comprise the exchange or buying and selling of commodities, or the providing of services, or relating to or connected with trade, traffic in goods

and services or commerce in general; provided, however, that the use of land for regulated public utility purposes shall not be considered a commercial purpose.

"Communications systems" means towers, antennas, buildings, cables, and other accessory structures for electronic, radio frequency, or microwave transmissions or receptions.

"Comprehensive management plan" means a ~~[comprehensive]~~ plan to manage multiple uses and activities to protect and conserve natural and cultural resources.

"Conservation district" means those lands within the various counties of the State and state marine waters bounded by the conservation district line, as established under provisions of Act 187, Session Laws of Hawaii, 1961, and Act 205, Session Laws of Hawaii 1963, or future amendments thereto.

"Department" means the department of land and natural resources.

"Departmental permit" means a permit approved by the chairperson.

"Emergency" means an imminently dangerous situation that poses a substantial threat to public health~~[,]~~ or safety, ~~[and welfare]~~ as declared by the chairperson, or deputy director of the department in the absence of the chairperson. Situations lasting more than one year are considered "unmanaged hazardous conditions".

"Emergency shoreline hardening" means the installation of temporary shoreline stabilization structures authorized by the chairperson pursuant to section 13-5-35, designed to prevent land loss while mid to long-term management solutions are devised and implemented by the landowner.

"Flood zone" means those areas in the "V" or "A" zones that require mandatory flood insurance, in accordance with the Federal Emergency Management Agency-designated ~~[federal]~~ flood insurance rate map flood zones.

"Forest reserves" means those lands set aside as forest reserves by the department pursuant to section 183-11, HRS.

"Grading" means the excavation of earth material, fill, or combination thereof.

"Grubbing" means the removal of vegetation by scraping, dislodging, or uprooting vegetation that breaks the topsoil.

"Historic property" means any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old, or otherwise defined in section 6E-1, HRS.

"Hoala loko ia program" means a program approved by the board to revitalize traditional Hawaiian fishponds.

"Imminently threatened" means an inhabited dwelling, essential cultural or natural resource, or other (non-movable) major structure or public facility that is in danger of destruction or severe damage due to natural hazards. ~~[For coastal erosion, "imminently threatened" shall mean a distance of twenty feet or less from an actively eroding shoreline or erosion that will threaten the structure in less than six months.]~~

"Intactness" means the visual integrity of a landscape, to the extent to which the natural landscape is free from encroaching features.

"Invasive species" means ~~[any terrestrial or aquatic plant or animal that can directly or indirectly injure or cause damage to the environment, native species, natural or cultural resources, navigation, or to the public health, safety and welfare.]~~ alien species whose introduction does or is likely to cause economic, social, cultural or environmental harm.

"Kuleana land" means those lands granted to native tenants pursuant to L. 1850, p. 202 entitled "An Act Confirming Certain Resolutions of the King and Privy Council, passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges", as originally enacted and amended.

"Land" means all real property, fast or submerged, and all interests therein, including fauna, flora, minerals, and all such natural resources, unless otherwise expressly provided.

"Landowner" means an owner of land, or of any

estate or interest in that land.

"Land use" means:

- (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

For purposes of this chapter, harvesting and removing does not include the taking of aquatic life or wildlife that is regulated by state fishing and hunting laws nor the gathering of natural resources for personal, non-commercial use or pursuant to Article 12, Section 7 of the Hawaii State Constitution or section 7-1, HRS, relating to certain traditional and customary Hawaiian practices.

"Landscape plan" means a visual representation of the proposed layout of an outdoor space which shows the locations of proposed natural elements (e.g. flowers, trees, or grasses) to be planted as well as any native plants or trees proposed for removal. The plan shall be accompanied by a list of the species to be removed or planted and their quantities, as well as discussion of construction methods.

"Landscaping" means the alteration of plant cover (including clearing, grubbing, and tree removal for non-commercial purposes), including chemical and mechanical control methods, in accordance with state and federal laws and regulations.

"Legal lot of record" means a lot or parcel that was created through compliance with land use laws and regulations in effect at the time of creation.

"Major alteration" means work done to an existing structure, facility, or use that results in more than fifty per cent increase in the size of the structure, facility, or use.

"Management plan" means [a project or site based plan to protect and conserve natural and cultural resources.] a long-term planning document for a specified site that identifies a desired outcome which includes implementation and monitoring procedures to measure the progress of actions to protect and conserve natural and cultural resources.

"Minor alteration" means work done to an existing structure, facility, or use that results in a ten per cent or less increase in the size of the structure, facility, or use.

"Minor repair" means routine work done to an existing structure, facility, use, land, and equipment, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource.

"Moderate alteration" means work done to an existing structure, facility, or use that results in more than a ten per cent increase, but no more than a fifty per cent increase, in the size of the structure, facility, or use.

"Mooring" means a device for holding a vessel in place, where an anchor, concrete block, or similar device is placed or dropped on submerged land with a line attached to a buoy to which the vessel is attached.

"Native habitat restoration" means the preservation or restoration of ecosystem functions which incorporates the best available science, utilizes traditional ecological knowledge, considers climate change impacts, and will have a positive ecological benefit on native species, water quality, or living coastal or marine resources.

"Natural resource" means resources such as plants, aquatic life and wildlife, cultural, historic, recreational, geologic, and archeological sites, scenic areas, ecologically significant areas, watersheds, and minerals.

"Nonconforming use" means the lawful use of any building, premises, or land for any trade, industry, residence, or other purposes which is the same as and

no greater than that established prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district.

"Presiding officer" means the person conducting the hearing, which shall be the chairperson or the chairperson's designated representative.

"Property" means real property.

"Public purpose use" means not for profit land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity, except that an independent non-governmental regulated public utility may be considered to be engaged in a public purpose use. Examples of public purpose uses may include but are not limited to public roads, marinas, harbors, airports, trails, water systems and other utilities, communication systems, flood or erosion control projects, recreational facilities, community centers, and other public purpose uses, intended to benefit the public in accordance with public policy and the purpose of the conservation district.

"Renewable energy" means energy generated or produced by using the following sources: wind, the sun, flowing water, geothermal energy, ocean water, or currents and waves, including ocean energy conversion.

"Repair, maintenance, operation" means land uses and activities necessary and incidental for the continued conduct of a use, whether nonconforming or permitted, including repairs not exceeding fifty per cent of the replacement value in today's dollars of the originally authorized or legally nonconforming structure or use.

"Scenic area" means areas possessing natural, scenic, or wildland qualities.

"Sea Level Rise Exposure Area" (SLR-XA) means the sea level rise exposure area delineated in the Hawaii Climate Change Mitigation and Adaptation Commission's Hawaii Sea Level Rise Vulnerability and Adaptation Report, and the Hawaii Sea Level Rise Viewer, or their successors.

"Shed" means a roofed structure used as a storage space for items such as tools and equipment, with a

maximum floor area of one hundred square feet.

"Shelter" means a structure used for sheltering from the elements, with a maximum floor area of six hundred square feet.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves, or as otherwise defined in section 205A-1, HRS.

"Shoreline hardening" means the installation of a seawall, revetment, or other hard structure in the shoreline area designed to prevent erosion. Does not include structures intended to stabilize or restore beaches or installation of emergency shoreline hardening authorized by the chairperson pursuant to section 13-5-35.

"Shoreline setback" shall include all of the land between the shoreline and the shoreline setback line, provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this chapter extends seaward of the shoreline, then the term "shoreline setback area" shall include the entire structure.

"Shoreline setback line" means the line established by this chapter running inland to and parallel to the certified shoreline at a horizontal plane.

"Single family residence" means a building or structure used or designated and intended to be used as a home or dwelling place for a family.

"Site plan" means a plan drawn to scale, showing the actual dimensions and shape of the property, the size and locations on the property of existing and proposed structures and open areas including vegetation and landscaping.

"Small-scale beach restoration program" means a program to restore beaches and improve coastal hazard resilience that is authorized by the board through a

programmatic conservation district use permit and programmatic environmental assessment.

"State marine waters" means all waters of the State, including the water column and water surface, extending from the shoreline seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary.

"Storm and seismic waves" mean waves of unusual magnitude which occurred on specific dates as part of a tsunami or a named hurricane, to exclude seasonal high surf.

"Subdivision" means a division of a parcel of land into more than one parcel.

"Submerged lands" means lands from the shoreline seaward to the extent of the State's jurisdiction.

"Subzone" means a zone established within the conservation district that is identified by boundaries and resource characteristics pursuant to this chapter.

~~["Temporary variance" means an exception to zoned use, where good cause is shown and where the proposed variance is for a use determined to be in accordance with good conservation practices.]~~

"Topographical features" means natural and artificial geographical features that appear on a topographical map, such as, but not limited to, mountains, hills, valleys, rivers, gulches, streams, wetlands, shorelines, beaches, submerged lands, roads, unimproved roads, trails, and other such features.

"Transient rental" means the use of a single-family residence or structure for less than one hundred eighty consecutive days in exchange for compensation, including but not limited to monetary payment, services, or labor of employees.

"Transportation system" includes the means to transport people, animals, or goods or any combination thereof from one place to another, including roads, harbors, airways, and their related facilities.

"Unmanaged hazardous condition" means an imminently dangerous situation lasting in excess of one year that poses a substantial threat to public health and safety as declared by the chairperson, or deputy

director of the department in the absence of the chairperson.

"Water system" means a network of pipelines, storage, pumps, water sources, and other appurtenances (e.g., ditches, channels, canals, flumes, siphons, telemark lines, drainage systems, etc., all of which are part of a surface water collection system) that furnishes a supply of water to water users. The water sources may include diversions, impoundments, or wells, and may include water treatment facilities to achieve necessary water quality standards.

~~["Wilderness area" means an area designated by the department having a diversity and abundance of native flora and fauna, geological formation, or both, largely undisturbed by human influences, in which the introduction of non-indigenous plants and animals, mining, grazing of domestic animals, removal of vegetation, overnight camping, and the construction of roads or structures is prohibited or restricted.]~~

[Eff 12/12/94; am and comp 12/05/11; am and comp  
] (Auth: HRS §183C-3) (Imp: HRS §183C-2)

**§13-5-3 Appeals.** Any final order of the department or board based upon this chapter may be appealed to the ~~[circuit]~~ environmental court of the circuit in which the land in question is found. The appeal shall be in accord with chapter 91, HRS and the Hawaii rules of civil procedure. [Eff 12/12/94; am and comp 12/05/11; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-8)

~~[Note: See Chapter 91, Hawaii Revised Statutes and Hawaii Rules of Civil Procedure.]~~

**§13-5-4 Mediation.** Upon receipt of a request or on the board's own initiative, the board may request that the petitioner and any affected persons identified as necessary to the resolution of the dispute to participate in mediation. Participation by the parties shall be voluntary. All requests dealing with the same

subject matter shall be consolidated in a single mediation. [Eff 12/12/94; am and comp 12/05/11; comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

**§13-5-5 Amendments.** (a) Whenever any landowner or government agency whose property is directly affected by this chapter makes an application to change the boundaries or identified land uses of any subzone, rezone a subzone, establish a new subzone with certain identified land uses or when a person seeks to otherwise amend this chapter, or where the board proposes to make a change or changes itself, the change or changes shall be put in the form of a proposed amendment of this chapter by the applicant, complete with necessary maps, four copies of which shall be filed with the board.

(b) Procedures for amending this chapter are prescribed in section 183C-4, HRS, as amended and chapter 13-1, subchapter 3. [Eff 12/12/94; am and comp 12/05/11; comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

**§13-5-6 Penalty.** (a) Any person, firm, government agency, or corporation violating any of the provisions of this chapter or permits issued pursuant thereto shall be punished as provided in chapter 183C, HRS.

(b) The board may delegate to the department or a presiding officer the authority to adjudicate violations of the provisions of this chapter or any permit issued pursuant thereto.

(c) No ~~[permit]~~ application shall be processed by the department or board until any violations pending against the subject parcel or against the applicant are resolved.

(d) No land use~~[-s-]~~ shall be conducted in the conservation district unless a permit or approval is first obtained from the department or board.

(e) Any terms or conditions imposed by the board for a violation of this chapter shall be recorded with the deed instrument

(f) For the purpose of providing guidance in the assessment of administrative sanctions and promoting consistency within the department, ~~[there shall be adopted by the board an administrative sanctions schedule]~~ penalties will be applied pursuant to the administrative sanctions schedule approved by the board as contained in Exhibit 1 entitled "Conservation District Violation Penalties Schedule: October 14, 2022." [Eff 12/12/94; am and comp 12/05/11; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-7)

**§13-5-7 Nonconforming uses and structures.** (a)

This chapter shall not prohibit the ~~[continuance, or repair and maintenance,]~~ repair, maintenance, and operation of nonconforming land uses ~~[and structures]~~ as defined in this chapter.

(b) Any land identified as a kuleana may be put to those uses which were historically, customarily, and actually found on the particular lot including, if applicable, a single-family residence.

(c) The repair of ~~[structures]~~ a nonconforming land use shall be subject to development standards set forth in this chapter, and other requirements as applicable, including but not limited to a county building permit, floodplain management regulation, shoreline setback, and shoreline certification.

(d) If a nonconforming structure is damaged or destroyed by any means (including voluntary demolition) to an extent of more than fifty per cent of the replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter ~~[, except as provided under section 13-5-22(P-8)]~~. The applicant for the repair of a nonconforming structure shall prove that that repair does not exceed fifty percent of the total replacement cost by providing a professionally licensed construction estimate along with the size and

dimensions of the original structure such as approved plans, engineering or architectural drawings, surveys, and legible pictures, when requested by the department.

(e) ~~[Repairs or maintenance]~~Repair, maintenance, or operation of a nonconforming structure shall not exceed the size, height, or density of the structure which existed on October 1, 1964 or at the time of its inclusion into the conservation district, with the exception that areas within the flood zone may allow consideration for additional heights above the maximum allowable building elevation to comply with the National Flood Insurance Program requirements when so determined by the board, and adjustments to the location of the nonconforming structure may also be considered to reduce risks from erosion and flooding.

(f) The burden of proof to establish that the land use or structure is legally nonconforming shall be on the applicant. [Eff and comp 12/05/11; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §§183C-5, 183C-6)

## SUBCHAPTER 2

### SUBZONES

**§13-5-10 Subzones; generally.** (a) There are hereby established subzones within the conservation district, as listed in Exhibit ~~[4]~~ 2, entitled "Subzone Designations: ~~[August 12, 2011]~~ June 28, 2019", which is located at the end of this chapter and made a part of this section. Subzone designations of conservation district lands are delineated on maps on file with the department.

(b) Lands in the conservation district are classified into one of the following subzones:

- (1) Protective;
- (2) Limited;
- (3) Resource;

(4) General; or

(5) Special.

(c) Land uses identified in a subzone shall be restricted to those uses provided for in this chapter. [Eff 12/12/94; am 2/1/99; am 1/28/02; am 4/27/02; am 4/10/03; am 07/28/06; am 4/7/2011; am and comp 12/05/11; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

**§13-5-11 Protective (P) subzone.** (a) The objective of this subzone is to protect valuable natural and cultural resources in designated areas such as restricted watersheds, marine, plant, and wildlife sanctuaries, significant historic, archaeological, geological, and volcanological features and sites, and other designated unique areas.

(b) The (P) subzone shall encompass:

- (1) Lands and waters necessary for protecting watersheds, water sources, and water supplies;
- (2) Lands and waters necessary for the preservation and enhancement of designated historic or archaeological sites and designated sites of unique physiographic significance;
- (3) Areas necessary for preserving natural ecosystems of native plants, fish, and wildlife, particularly those which are endangered; and
- (4) All land encompassing the Northwestern Hawaiian Islands except Midway Atoll.

(c) Identified land uses in the protective (P) subzone are restricted to those listed in section 13-5-22. [Eff 12/12/94; am and comp 12/05/11; comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

**§13-5-12 Limited (L) subzone.** (a) The objective of this subzone is to limit uses where natural conditions suggest constraints on human activities.

(b) The (L) subzone shall encompass:

- (1) Land susceptible to ~~[floods and soil erosion, lands undergoing major erosion damage and requiring corrective attention, as determined by the county, state, or federal government,]~~ flooding and major erosion and landslide damage; and
- (2) Lands necessary for the protection of the health~~[,]~~ or safety ~~[, and welfare]~~ of the public by reason of the land's susceptibility to inundation by tsunami, flooding, sea level rise, volcanic activity, subsidence, or landslides, or which have a general slope of forty per cent or more.

(c) Identified land uses in the limited (L) subzone are restricted to those listed in section 13-5-23. [Eff 12/12/94; am and comp 12/05/11; comp  
] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

**§13-5-13 Resource (R) subzone.** (a) The objective of this subzone is to ensure, with proper management, the sustainable use of the natural resources of those areas.

- (b) The (R) subzone shall encompass:
- (1) Lands necessary for providing future parkland and lands presently used for national, state, county, or private parks;
  - (2) Lands suitable for growing and harvesting of commercial timber or other forest products;
  - (3) Lands suitable for outdoor recreational uses such as hunting, fishing, hiking, camping, and picnicking;
  - (4) Offshore islands of the State of Hawaii, unless placed in a (P) or (L) subzone;
  - (5) Lands and state marine waters seaward of the shoreline to the extent of the State's jurisdiction, unless placed in a (P) or (L) subzone.

(c) Identified land uses in the resource (R) subzone are restricted to those listed in section 13-5-24. [Eff 12/12/94; am and comp 12/05/11; comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

**§13-5-14 General (G) subzone.** (a) The objective of this subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature.

(b) The (G) subzone shall encompass:

- (1) Lands with topography, soils, climate, or other related environmental factors that may not be normally adaptable or presently needed for urban, rural, or agricultural use; and
- (2) Lands suitable for farming, flower gardening, operation of nurseries or orchards, grazing; including facilities accessory to these uses when the facilities are compatible with the natural physical environment.

(c) Identified land uses in the general (G) subzone are restricted to those listed in section 13-5-25. [Eff 12/12/94; am and comp 12/05/11; comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

**§13-5-15 Special (S) subzone.** (a) The objective of this subzone is to provide for sustainable use of areas possessing unique developmental qualities that complement the natural resources of the area.

(b) The special subzones are listed in Exhibit [2]3, entitled "Special Subzones: [September 6, 1994] June 28, 2019", which is located at the end of this chapter and made a part of this section. Eff 12/12/94; am and comp 12/05/11; am and comp 12/05/11; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

**§13-5-16 Designation of subzones.** (a) A landowner or government agency whose property is directly affected by this chapter may apply to the department to establish a new subzone, rezone an existing subzone, or change a boundary or identified land uses of a subzone. The board can initiate action under this section.

(b) The application shall include the following:

- (1) Name of applicant;
- (2) Name of landowner~~[(s)]~~, if different from applicant, or any person or entity with the landowner's written consent;
- (3) Property description of land being affected by tax map key parcel (metes and bounds may be required when the department deems necessary);
- (4) Map of area drawn to scale;
- (5) Background of applicable land use commission petition, including a final decision and order (for new subzone designations);
- (6) Existing subzone classification or land use zoning designations of subject property and surrounding properties;
- (7) Geographic characteristics:
  - (A) General topography, geologic conditions, and slope; and
  - (B) Soils types and productivity rating (e.g., Agricultural Lands of Importance to the State of Hawaii (ALISH) and proposed Land Evaluation and Site Assessment (LESA));
- (8) Climatic characteristics (e.g., rainfall, predominant wind direction annually);
- (9) Hydrological characteristics (e.g., surface water, groundwater, drainage patterns) and applicable water area classification, if applicable, (e.g., restricted watershed, groundwater recharge area);
- (10) Biological (flora and fauna) characteristics (e.g., vegetation, wildlife, specific identified species, or habitat of identified threatened or endangered species);

- (11) A list of historic properties in the project area;
- (12) Scenic or visual resources (e.g., significant view planes and geological features);
- (13) Infrastructure evaluations (e.g., roads and access, water systems, sewage systems, drainage systems, recreational facilities, community population, income and household characteristics, and utilities availability);
- (14) Review of property characteristics in relation to subzone objectives;
- (15) Evaluation and recommendation of appropriate subzone designation and boundary characteristics; and
- (16) Application fee of \$500 and public hearing fee of \$250 plus publication costs.

(c) The change in boundary or land use shall be put in the form of a proposed administrative rule change by the applicant. Designation of subzones shall be processed as an administrative rule amendment, and, as such, shall be in accordance with departmental rules and applicable statutes, and shall include a public hearing. [Eff 12/12/94; am and comp 12/05/11; comp ] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4)

Note: See section 13-5-5.

**§13-5-17 Boundary determinations; criteria.** (a)

Prior to the department receiving for processing any application for a permit, if the applicant's proposed land use lies within fifty feet of a subzone boundary, the applicant shall first notify the department of the intended use, and at the department's discretion shall seek a determination of the precise boundary of the subzone with respect to the parcel in question. Applications shall be accompanied by a fee of \$100.

(b) The notification shall include all relevant information, including topographical maps, subzone maps, and tax maps.

(c) The department shall have thirty days within which to issue its determination, after which the party seeking the permit is free to make an application.

(d) The applicant can appeal the departmental determination to the board. The board shall resolve any uncertainty regarding the location of the subzone boundary and the board's determination shall be final.

(e) In all cases, the determination of subzone boundaries shall utilize the following criteria:

- (1) The boundary shall follow natural or fixed physical features;
- (2) The boundary shall be defined by a series of straight lines;
- (3) Where coterminous with forest reserve boundaries, the boundary shall be determined by metes and bounds descriptions of the forest reserve;
- (4) Where a subzone boundary follows an elevation, the boundary shall be determined by reference to topographical maps or other evidence that may be used to establish elevation; or
- (5) Where the subzone boundary follows a property boundary, the boundary shall be defined by the metes and bounds of the property boundary. [Eff 12/12/94; am and comp 12/05/11] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

### SUBCHAPTER 3

#### IDENTIFIED LAND USES AND REQUIRED PERMITS

§13-5-21 Routine actions. (a) The following actions do not require a permit from the department or the board:

- (1) Routine maintenance of a property or facility which does not increase its size or use, including but not limited to lawn mowing, tree trimming, weed control, clearing of understory that does not involve grubbing

or grading, removal of encroaching shoreline vegetation, fence maintenance, the removal of trash and debris, and painting of an existing structure.

- (2) Removal of dead or diseased trees or trees that pose a hazard to public safety; provided, however, that the landowner shall be required to provide documentation for the need to remove the trees.
- (3) Basic data collection, research, education, and resource evaluation that is temporary and results in negligible ground disturbance.
- (4) Rooftop solar or photovoltaic systems.
- (b) Agency consultation with the department is recommended for the following actions to determine permitting requirements prior to performing the action.

These following actions may require a permit or approval from the department or board based on the scope of the proposed use.

- (1) Native habitat restoration in an area less than one acre. Native habitat restoration includes, but is not limited to:
  - (A) The removal of invasive species, including chemical and mechanical control methods, in accordance with state and federal laws and regulations that results in no, or only minor ground disturbance;
  - (B) Planting of native and endemic plants; and
  - (C) New fence ex-closures for native plants or native wildlife communities.
- (2) Native coral transplanting or out planting done in conjunction with either a (a) State of Hawaii Division of Aquatic Resources, (b) United States National Marine Fisheries Service, or (c) National Oceanic and Atmospheric Administration restoration plan or reef management plan.
- (3) Minor repair of an existing structure, facility, use, land, and equipment, whether

it is nonconforming or permitted, which does not increase its size or intensity of use and that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource. Any repair, strengthening, reinforcement, and maintenance of a shoreline erosion control structure shall be done in accordance with 13-5-22 (P-15) Shoreline Hardening. Any repair, strengthening, reinforcement, and maintenance of a fishpond shall be in accordance with sections 183-44 and 183B-2, HRS.

- (4) Clearing of sand from stream mouths, canals, small boat harbors, or other features for state or county maintenance, provided that the sand removed shall be placed on adjacent shoreline areas unless the placement would result in significant turbidity, as determined by the department.
- (5) Maintenance dredging not to exceed the dredging limits for an area as previously authorized by the department. [Eff and comp]  
]

**§13-5-22 Identified land uses in the protective subzone.** (a) If a proposed use in the protective subzone is not presented below, an applicant may ~~[request a temporary variance,]~~ petition the land use commission for a land use district boundary change [7] or initiate an administrative rule amendment to have the proposed use added to the identified land uses.

(b) Identified land uses in the protective subzone and their required permits (if applicable), are listed below:

- ~~[(1) Identified land uses beginning with letter (A) require no permit from the department or board,]~~

- [~~(2)~~] (1) Identified land uses [~~beginning with letter (B)~~] noted as SPA require a site plan approval by the department;
- [~~(3)~~] (2) Identified land uses [~~beginning with letter (C)~~] noted as DEP require a departmental permit; and
- [~~(4)~~] (3) Identified land uses [~~beginning with letter (D)~~] noted as BRD require a board permit, and where indicated, a management plan[~~-~~] or coastal hazard mitigation disclosure statement.

P-1 DATA COLLECTION

- [~~(A-1)~~] ~~Basic data collection, research, education, and resource evaluation that is temporary (less than thirty days) and results in negligible ground disturbance (small gages or monitoring devices) and does not involve a land use (e.g., botanical, archaeological, faunal surveys).~~
- [~~(B-1)~~] SPA-1 Basic data collection, research, education, and resource evaluation that results in a minor disturbance to natural resources or land (e.g., corings, excavations, etc.).
- [~~(C-1)~~] DEP-1 Basic data collection, research, education, and resource evaluation that involves a land use causing ground disturbance from installation of equipment (e.g., meteorological towers, radio towers, or test wells).
- [~~(D-1)~~] BRD-1 Data collection, research, education, and resource evaluation that involves permanent facilities or structures larger than 500 square feet or a land use causing significant ground disturbance or impact to a natural resource.

P-2 [~~FISHPONDS~~] LOKO IA

SPA-1      Repair, restoration, maintenance, and operation of traditional fishpond systems that conform to the "Hoala Loko Ia" program approved by the Board, as contained in Exhibit 7 entitled "Hoala Loko Ia Program Standards: October 14, 2022." The application fee for this land use shall be waived.

~~[(D-1)]~~ BRD-1    ~~[Fishpond reconstruction or construction]~~ Construction of a new fishpond or new taro cultivation system. A management plan ~~[, approved simultaneously with the permit,]~~ is also required.

P-3            KULEANA LAND USES

~~[(D-1)]~~ BRD-1    Agriculture and a single-family residence, if applicable, when such land use was historically, customarily, and actually found on the property. Agriculture means the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, and subsistence livestock. Single family residences are subject to development standards set forth in this chapter, and other requirements as applicable, including but not limited to a county building permit, floodplain management regulation, management plan, and coastal hazard mitigation disclosure statement (if within the Sea Level Rise Exposure Area or a coastal high hazard area).

~~[P-4 ——— REMOVAL OF INVASIVE SPECIES]~~

~~[(A-1)]      Removal of invasive species including chemical and mechanical control methods, not to exceed one acre, in accordance with state and federal laws and regulations, for the purpose of protecting, preserving, or enhancing native species, native habitat, or native ecosystem functions that results in~~

~~no, or only minor ground disturbance. The department or board reserves the right to require site plan approval, departmental or board approval if it is determined that the proposed action may cause significant negative secondary impacts on natural or cultural resources, or the surrounding community. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to the State. For existing developed lots, compliance with section 13-5-23(L-2) satisfies the requirements of this section.~~

~~(B-1)~~

~~Removal of invasive species including chemical and mechanical control methods, in an area greater than one acre, in accordance with state and federal laws and regulations, for the purpose of protecting, preserving, or enhancing native species, native habitat, or native ecosystem functions that results in no, or only minor ground disturbance. The department or board reserves the right to require departmental or board approval if it is determined that the proposed action may cause significant negative secondary impacts on natural and cultural resources, or the surrounding community. Any replanting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to the State. For existing developed lots, compliance with section 13-5-23(L-2) satisfies the requirements of this section.]~~

P-5

MOORINGS AND AIDS TO NAVIGATION

~~[(C-1)]~~ DEP-1 Moorings and aids to navigation. This requirement is satisfied by obtaining a permit pursuant to chapter 200, HRS.

P-6

PUBLIC PURPOSE USES

- ~~[(B-1)]~~ SPA-1 Installation of emergency warning devices (e.g., tsunami warning sirens) and lifeguard towers.
- ~~[(D-1)]~~ BRD-1 Not for profit land uses undertaken in support of a public service by an agency of the county, state, or federal government, or by an independent non-governmental entity, except that an independent non-governmental regulated public utility may be considered to be engaged in a public purpose use. Examples of public purpose uses may include but are not limited to public roads, marinas, harbors, airports, trails, water systems and other utilities, energy generation from renewable sources, communication systems, flood or erosion control projects, recreational facilities, community centers, and other public purpose uses, intended to benefit the public in accordance with public policy and the purpose of the conservation district. Compliance with county floodplain management regulations is required, if applicable. A management plan, coastal hazard mitigation disclosure statement, or both, is also required, if applicable.

P-7 SIGNS

- ~~[(B-1)]~~ SPA-1 Signs, including safety signs, danger signs, no trespassing signs, and other informational signs. No signs shall exceed twelve square feet in area and shall be non-illuminated. All signs shall be erected to be self-supporting and be less than or equal to eight feet above finished grade.

P-8 STRUCTURES AND LAND USES, EXISTING

- ~~[(A-1)]~~ Minor repair, maintenance, and operation to an existing structure, facility, use, land, and equipment, whether it is nonconforming or

~~permitted, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource. Any repair, strengthening, reinforcement, and maintenance of a fishpond shall be in accordance with section 183-44 and 183B-2, HRS.]~~

[~~(B-1)~~] SPA-1 Demolition, removal, or minor alteration of existing structures, facilities, land, and equipment. Any historic property shall be evaluated by the department for historical significance.

[~~(B-2)~~] SPA-2 Replacement or reconstruction of existing structures and facilities, not to include nonconforming structures or shoreline erosion control structures and devices, under a previously approved conservation district use permit where the new structure will be located approximately on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced. Reconstruction or replacement of structures and facilities shall be subject to development standards set forth in this chapter, and other requirements as applicable, including but not limited to a county building permit, floodplain management regulation, shoreline setback, coastal hazard mitigation disclosure statement (if within the Sea Level Rise Exposure Area or a coastal high hazard area), and shoreline certification. Adjustments to the location of the structure may also be allowed to reduce risks from erosion and flooding. No enlargement of the structures and facilities is permitted under this section. The provisions of this section will not be applicable upon failure to file an application to replace or reconstruct structures and facilities within two years of

the demolition or destruction of structures and facilities.

~~[(B-3)]~~ SPA-3 Replacement or reconstruction of an existing nonconforming single-family residence, where the new single-family residence will be located approximately on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the single-family residence replaced. Reconstruction or replacement of any single-family residence shall be subject to development standards set forth in this chapter, and other requirements as applicable, including but not limited to a county building permit, floodplain management regulation, shoreline setback, and shoreline certification~~[-]~~, and coastal hazard mitigation disclosure statement (if within the Sea Level Rise Exposure Area or a coastal high hazard area). No enlargement of the single-family residence is permitted under this section. The provisions of this section will not be applicable upon failure to file an application to replace or reconstruct a single-family residence within two years of the demolition or destruction of the single-family residence.

~~[(C-1)]~~ DEP-1 Moderate alteration of existing structures, facilities, uses, and equipment~~[-]~~, not to include nonconforming structures or shoreline erosion control structures and devices.

~~[(D-1)]~~ BRD-1 Major alteration of existing structures, facilities, uses, and equipment, or topographical features, not to include nonconforming structures or shoreline erosion control structures and devices, which are different from the original use or different from what was allowed under the original permit. Major alterations shall be subject to development standards set forth in this chapter, and other requirements as

applicable, including but not limited to a county building permit, floodplain management regulation, management plan, or coastal hazard mitigation disclosure statement (if within the Sea Level Rise Exposure Area or a coastal high hazard area). When county permits are required for the associated plan~~(s)~~, the department's approval shall also be required.

Note: For nonconforming uses, see section 13-5-7. For shoreline erosion control structures and devices see section 13-5-22 (P-15).

P-9 STRUCTURES, ACCESSORY

~~[(B-1)]~~ SPA-1 Construction or placement of structures accessory to existing facilities or uses.

P-10 SUBDIVISION OR CONSOLIDATION OF PROPERTY

~~[(C-1)]~~ DEP-1 Consolidation and re-subdivision into an equal number of lots that does not result in increased density.

~~[(C-2)]~~ DEP-2 Consolidation of property into a lesser number of legal lots of record currently existing and approved, which furthers the objectives of the subzone.

~~[(D-1)]~~ BRD-1 Subdivision of property into two or more legal lots of record that serves a public purpose and is consistent with the objectives of the subzone.

P-11 TREE REMOVAL

~~[(A-1)]~~ Removal of dead or diseased trees for non-commercial purposes.

~~[(A-2)]~~ Removal of trees that pose a hazard to public safety; provided, however, that the landowner shall be required to provide documentation for the need to remove the trees.]

~~[(B-1)]~~ SPA-1 Selective removal of individual trees (except ~~[that a permit is not required for tree removal allowed under P-4 (A-1) and P-11 (A-1), (A-2)]~~ for those that have been reviewed pursuant to 13-5-21) for non-commercial purposes provided that each tree is replaced on a one-to-one-basis, when appropriate, with trees that are appropriate to the site location with preference to trees that are endemic or indigenous to Hawaii.

P-12 [POWER GENERATION FROM RENEWABLE RESOURCES]  
RENEWABLE ENERGY PROJECTS

SPA-1 Small scale renewable energy projects of less than 5 kW that are accessory to existing facilities or uses.

DEP-1 Renewable energy projects of less than 50 kW that are accessory to existing facilities or uses; including generation, conversion, and transmission facilities, and short access roads of less than one half of a mile. Renewable energy projects shall minimize impacts to natural, cultural, and recreational resources, and shall be expedited in the application review and decision-making process.

~~[(D-1)]~~ BRD-1 [Hydroelectric, wind generation, ocean thermal energy conversion, wave, solar, geothermal, biomass, and other renewable power generation facilities from natural resources;] Renewable energy projects of more than 50kW; includes generation, conversion, and transmission facilities and access roads. Renewable energy projects shall minimize impacts to natural, cultural, and recreational resources, and shall be expedited in the application review and decision-making process. A management plan, coastal hazard mitigation site plan, or both,

~~[approved]~~ reviewed simultaneously with the permit, is also required.

BRD-2

Sea water air conditioning systems

P-13 LAND AND RESOURCE MANAGEMENT

- ~~[(A-1)]~~ ~~Basic land management, including routine weed control, clearing of understory, and tree pruning, utilizing chemical and mechanical control methods, which involves no grubbing or grading, in accordance with state and federal laws and regulations, in an area less than one acre.~~
- ~~(A-2)~~ ~~Planting of native and endemic plants and fence maintenance. New fence ex-closures for small native plants or wildlife communities, in an area less than one acre. The department or board reserves the right to require a site plan approval or a departmental permit or a board permit if it is determined that the proposed action may cause secondary impacts on natural or cultural resources.~~
- ~~(A-3)~~ ~~Clearing of sand or silt from stream mouths, canals, drainage pipes, or other features for state or county maintenance, provided that the sand removed shall be placed on adjacent shoreline areas unless the placement would result in significant turbidity, as determined by the department.]~~
- ~~[(B-1)]~~ SPA-1 Basic land management, including routine weed control [7] and clearing of understory [~~7~~ ~~and tree pruning~~], utilizing chemical and mechanical control methods [7] which involves no grubbing or grading, in accordance with state and federal laws and regulations, in an area greater than one acre. [~~The department or board reserves the right to require departmental or board approval if it is determined that the proposed action may cause significant negative secondary impacts on~~

- ~~natural or cultural resources, or the surrounding community.]~~
- ~~[(B-2) Planting of native and endemic plants and fence maintenance. New fence ex-closures for native plants or small native wildlife communities, in an area greater than one acre. The department or board reserves the right to require departmental or board approval if it is determined that the proposed action may cause significant negative secondary impacts on natural or cultural resources.]~~
- ~~(B-3) Clearing land for fire pre-suppression and prevention, under a fire buffer plan approved by the department.]~~
- SPA-2 Native habitat restoration in an area greater than one acre developed in consultation with the division of forestry and wildlife. Land uses include, but are not limited to:
- (a) The removal of invasive species, including chemical and mechanical control methods, in accordance with state and federal laws and regulations that results in no, or only minor ground disturbance;
  - (b) Planting of native and endemic plants; and
  - (c) New fence ex-closures for native plants or native wildlife communities
- SPA-3 Installation of a shed for property maintenance purposes.
- SPA-4 Installation of an entry gate or perimeter security fencing to demarcate a property's entrance or boundaries. Entry gates and fencing do not include rock walls.
- SPA-5 Site preparation and staging areas.
- SPA-6 In situ cultivation and transplantation of native coral species for conservation purposes to improve biodiversity, increase coral cover, or to mitigate reef damage (e.g. vessel grounding). Use may include, but is not limited to, nursery structures, coral

- planting, and coral restoration actions related to improving the resource.
- ~~[(C-1)]~~ DEP-1 Installation of a ~~[new fence or]~~ shelter for property maintenance purposes.
  - ~~[(C-2)]~~ DEP-2 Erosion control, including replanting of trees and groundcover, placement of biodegradable or synthetic materials for slope stabilization, construction of minor swales and check dams, not to include shoreline ~~[erosion control]~~ hardening structures.
  - ~~[(D-1)]~~ BRD-1 Cabin.
  - ~~[(D-2)]~~ BRD-2 Road construction ~~[and major erosion control projects]~~.
  - ~~[(D-3)]~~ BRD-3 Water systems.

P-14            ~~[TELECOMMUNICATIONS]~~ COMMUNICATIONS SYSTEMS

- ~~[(B-1)]~~ SPA-1 Installation of new antenna~~(s)~~ on an existing telecommunications tower, including support equipment~~[-]~~, provided that any appurtenance does not increase the height of the structure by ten percent or ten feet, whichever is greater, does not add any appurtenance that extends more than twenty feet outward, does not involve trenching or excavating beyond the current site, and does not compromise the concealment elements of the existing structure.
- ~~[(C-1)]~~ DEP-1 Construction of a new tower at an existing site that is lower than existing towers and does not result in adverse visual impacts, and that is part of a site and system master plan.
- ~~[(D-1)]~~ BRD-1 New telecommunications facility. ~~[A management plan approved simultaneously with the permit, is also required.]~~
- BRD-2 Substantial change to an existing telecommunications facility, including construction of new towers higher than existing towers at the site; or projects that (a) increase the height of a tower by more

than ten percent or by more than ten feet, whichever is greater; (b) add an appurtenance that extends from the edge of the tower more than twenty feet; (c) involve trenching or grading outside the current site; or (d) would defeat the concealment elements of the existing support structure.

P-15 SHORELINE [~~EROSION CONTROL~~] HARDENING

SPA-1 Like to like repair of a lawfully existing shoreline hardening structure or device, provided that the applicant shows that the replacement or reconstruction will not adversely affect beach processes or lateral public access along the shoreline, the repair does not increase the size of the original structure, and the repair does not exceed fifty percent of the total replacement cost. When requested by the department, the applicant shall make this showing by providing two professionally licensed construction estimates along with the size and dimensions of the original structure such as approved plans, engineering or architectural drawings, surveys, and legible pictures. Work shall be conducted by a professionally licensed contractor.

~~[(D-1)] [Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters, provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building without the permit; (2) the use would not adversely affect beach processes or lateral public access along the shoreline, without adequately compensating the State for its loss; or (3) public facilities (e.g., public~~

~~roads) critical to public health, safety, and welfare would be severely damaged or destroyed without a shoreline erosion control structure, and there are no reasonable alternatives (e.g., relocation). Requires a shoreline certification.]~~

BRD-1

Temporary shoreline hardening structures in which the imminently dangerous situation has extended beyond the time period of an "emergency" and is now classified as an "unmanaged hazardous condition". Applicant must demonstrate a concerted effort to develop and implement a long-term solution which will enable them to remove the temporary erosion control measures. For the purposes of this section, "concerted effort" shall mean a bona fide planning effort involving the employment of professional planners, engineers, or consultants to develop and implement a long-term solution whether it involves relocation or abandonment, beach restoration, or some other form of shoreline management. A surety bond or other legal or financial assurance may be required to guarantee removal of temporary land uses at the expiration of the permitted time period.

BRD-2

Private shoreline hardening structures, including seawalls and revetments, at sites that do not have sand beaches and at sites where shoreline hardening structures would not interfere with existing recreational and waterline activities, and where there are no reasonable alternatives (e.g., relocation of the structure). Requires a shoreline certification. An applicant for a shoreline hardening structure shall complete a coastal hazard mitigation disclosure statement which shall be reviewed simultaneously with the permit.

- BRD-3      Public shoreline hardening structures at sites where public facilities (e.g., public roads, and other public facilities) critical to public health and or safety will be severely damaged or destroyed without shoreline hardening, and there are no reasonable alternatives (e.g., relocation of the facility). Requires a shoreline certification. An applicant for a shoreline hardening structure shall complete a coastal hazard mitigation disclosure statement which shall be reviewed simultaneously with the permit.
- P-16      BEACH RESTORATION / SAND MANAGEMENT
- SPA-1      Beach restoration projects or sand management activities not to exceed ten thousand cubic yards per occasion, that conform to the guidelines set forth in the small-scale beach restoration program as approved by the board.
- DEP-1      Beach restoration projects in excess of ten thousand cubic yards per occasion that conform to the guidelines set forth in the small-scale beach restoration program as approved by the board.
- ~~[(C-1)]~~      ~~[Sand placement not to exceed 10,000 cubic yards per occasion, with minor sand retention structures, extraction of sand from submerged lands, and transportation or transmission of sand from an offshore extraction site to the replenishment site.]~~
- ~~[(D-1)]~~      ~~[Sand placement in excess of 10,000 cubic yards including structures necessary to retain sand, extraction of sand from submerged lands, and transportation or transmission of sand from an offshore extraction site to the replenishment site.]~~

<u>BRD-1</u>	<u>Beach restoration projects that do not conform to the guidelines and requirements of the small-scale beach restoration program approved by the board.</u>
<u>P-17</u>	<u>ROCKFALL MITIGATION</u>
<u>SPA-1</u>	<u>Rockfall mitigation for the protection of public health or safety (e.g., public roads, residential structures, and public facilities) in accordance with state, federal, and county laws and regulations regarding rockfall mitigation methods, including, but not limited to: rock aprons, rock scaling, netting, wire mesh, shotcrete, impact fencing, and cable lashing. The department reserves the right to require departmental or board approval if the department determines that the proposed action may cause significant negative secondary impacts on natural or cultural resources.</u> [Eff 12/12/94; am and comp 12/02/11; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

**§13-5-23 Identified land uses in the limited subzone.** (a) In addition to the land uses identified in this section, all identified land uses and their associated permit or site plan approval requirements listed for the protective subzone also apply to the limited subzone, unless otherwise noted.

(b) If a proposed use is not presented below or in section 13-5-22, an applicant may ~~[request a temporary variance,]~~ petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the limited subzone and their required permits (if applicable), are listed below:

- ~~[(1) Identified land uses beginning with letter (A) require no permit from the department or board;]~~
- ~~[(2)]~~ (1) Identified land uses ~~[beginning with letter (B)]~~ noted as SPA require a site plan approval by the department;
- ~~[(3)]~~ (2) Identified land uses ~~[beginning with letter (C)]~~ noted as DEP require a departmental permit; and
- ~~[(4)]~~ (3) Identified land uses ~~[beginning with letter (D)]~~ noted as BRD require a board permit, and where indicated, a management plan or coastal hazard mitigation disclosure statement.

L-1            AGRICULTURE

SPA-1            Non-commercial agriculture, where all crops, animals, or animal products, are used to feed a single family, within an area no greater than five thousand square feet.

~~[(C-1)]~~ DEP-1 ~~[Agriculture]~~ Commercial agriculture, within an area of one acre or less, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry.

~~[(D-1)]~~ BRD-1 ~~[Agriculture]~~ Commercial agriculture, within an area of more than one acre, defined as the planting, cultivating, and harvesting of horticultural crops, floricultural crops, or forest products, or animal husbandry. A management plan approved simultaneously with the permit, is also required.

~~[(D-2)]~~ ~~Agricultural water systems, including pipelines.~~

L-2            LANDSCAPING

~~[(B-1)]~~ SPA-1 Landscaping ~~[defined as alteration (including clearing and tree removal) of plant cover, including chemical and~~

~~mechanical control methods, in accordance with state and federal laws and regulations that results in no, or only minor ground disturbance,~~ in an area less than ~~[2,000]~~ two thousand square feet. Tree removal not to exceed more than fifteen trees whose trunk size is greater than six inches in diameter. The department reserves the right to require that trees be relocated or replaced as appropriate. Any ~~[replanting]~~ planting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited. A landscape plan is also required.

~~[(C-1)]~~ DEP-1 Landscaping~~[defined as alteration (including clearing and tree removal) of plant cover, including chemical and mechanical control methods, in accordance with state and federal laws and regulations that results in no, or only minor ground disturbance,~~ in an area less than ~~[10,000]~~ ten thousand square feet. Tree removal not to exceed more than fifty trees whose trunk size is greater than six inches in diameter. The department reserves the right to require that trees be relocated or replaced as appropriate. Any ~~[replanting]~~ planting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited. A landscape plan is also required.

DEP-2 Rock walls, not to be used for erosion control purposes.

~~[(D-1)]~~ BRD-1 Landscaping~~[defined as alteration (including clearing and tree removal) of~~

~~plant cover, including chemical and mechanical control methods, in accordance with state and federal laws and regulations that results in no, or only minor ground disturbance,~~ in an area greater than ~~[10,000]~~ ten thousand square feet. Tree removal of more than fifty trees whose size is greater than six inches in diameter. The department reserves the right to require that trees be relocated or replaced as appropriate. Any ~~[replanting]~~ planting shall be appropriate to the site location and shall give preference to plant materials that are endemic or indigenous to Hawaii. The introduction of invasive plant species is prohibited. A landscape plan is also required.

~~[L-3]~~ ~~[SINGLE FAMILY RESIDENCE]~~

~~[(D-1)]~~ ~~[A single family residence in a flood zone or coastal high hazard area defined by the boundaries of the Federal Insurance Rate Maps (FIRM) that conforms to applicable county regulations regarding the National Flood Insurance Program and single family residential standards as outlined in this chapter.]~~

~~[L-4]~~ L-3 WILDERNESS CAMP

~~[(D-1)]~~ BRD-1 Establishment providing educational and recreational programs for youth and adult groups, including campsites for overnight accommodations in tents. Facilities may include unimproved access road or trail~~[(s)]~~, portable restrooms, and one meeting shelter not to exceed ~~[600]~~ six hundred square feet. A management plan ~~[approved]~~ and coastal hazard mitigation disclosure statement (if located in the Sea Level Rise Exposure Area, or coastal high hazard area), shall be

reviewed simultaneously with the permit ~~[, is also required]~~. [Eff 12/12/94; am and comp 12/05/11; am and comp  
] (Auth: HRS §183C-3) (Imp: HRS §183C-4)]

**§13-5-24 Identified land uses in the resource subzone.** (a) In addition to the land uses identified in this section, all identified land uses and their associated permit or site plan approval requirements listed for the protective and limited subzones also apply to the resource subzone, unless otherwise noted.

(b) If a proposed use is not presented below or in section 13-5-22 or 13-5-23, an applicant may ~~[a temporary variance,]~~ petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.

(c) Identified land uses in the resource subzone and their required permits (if applicable), are listed below:

- ~~[(1) Identified land uses beginning with letter (A) require no permit from the department or board;]~~
- ~~[(2)]~~ (1) Identified land uses ~~[beginning with letter (B)]~~ noted as SPA require a site plan approval by the department;
- ~~[(3)]~~ (2) Identified land uses ~~[beginning with letter (C)]~~ noted as DEP require a departmental permit; and
- ~~[(4)]~~ (3) Identified land uses ~~[beginning with letter (D)]~~ noted as BRD require a board permit, and where indicated, a management plan or coastal hazard mitigation disclosure statement.

R-1            AQUACULTURE

~~[(D-1)]~~ BRD-1 Aquaculture. ~~[under a]~~ A management plan, which shall be [approved] reviewed

simultaneously with the permit, is also required.

R-2           ARTIFICIAL REEFS

~~[(D-1)]~~ BRD-1 Artificial reefs.

R-3           ASTRONOMY FACILITIES

~~[(D-1)]~~ BRD-1 Astronomy facilities. ~~[under a]~~ A management plan, which shall be reviewed ~~[approved]~~ simultaneously with the permit, is also required.

R-4           COMMERCIAL FORESTRY

~~[(D-1)]~~ BRD-1 Sustainable commercial forestry. ~~[under a]~~ A management plan, which shall be ~~[approved]~~ reviewed simultaneously with the permit is also required.

R-5           MARINE CONSTRUCTION

~~[(A-1)]~~ ~~Maintenance dredging not to exceed the dredging limits for the area as previously authorized and dredged.]~~

~~[(D-1)]~~ BRD-1 Dredging, filling, or construction on submerged lands, including construction of harbors, piers, and marinas, ~~[and artificial reefs]~~ not to include shoreline hardening structures.

R-6           MINING AND EXTRACTION

~~[(D-1)]~~ BRD-1 Mining and extraction of any material or natural resource ~~[under a]~~ other than of geothermal resources, the exploration and development of which will be processed as a renewable energy project under section 13-3-22 (P-12). A management plan ~~[approved]~~, which shall be reviewed simultaneously with the permit, is also required.

R-7 SINGLE FAMILY RESIDENCE

~~[(D-1)]~~ BRD-1 A single family residence that conforms to design standards as outlined in this chapter. A coastal hazard mitigation disclosure statement reviewed simultaneously with the application is required if the property is in the Sea Level Rise Exposure Area or coastal high hazard area.

R-8 BOTANICAL GARDENS, PRIVATE PARKS, AND NATURE CENTERS

~~[(D-1)]~~ BRD-1 For a profit or non-profit establishment featuring plants or other natural resources and offering tours or other nature-based, outdoors educational and recreational activities, primarily during daylight hours. Facilities may include access road, restrooms, shelters, and not more than one structure for housing, administration, and maintenance not to exceed ~~[1,200]~~one thousand two hundred square feet~~[, under a management plan approved simultaneously with the permit].~~ A management plan and coastal hazard mitigation disclosure statement (if located in the Sea Level Rise Exposure Area or coastal high hazard areas), which shall be reviewed simultaneously with the permit, ~~[is]~~ are also required. [Eff 12/12/94: am and comp 12/05/11; am and comp ]  
(Auth: HRS §183C-3) (Imp: HRS §183C-4)

**§13-5-25 Identified land uses in the general subzone.** (a) In addition to the land uses identified in this section, all identified land uses and their associated permit or site plan approval requirements listed for the protective, limited, and resource subzones also apply to the general subzone, unless otherwise noted.

~~[(b) If a proposed use is not presented below or in section 13-5-22, 13-5-23, or 13-5-24, an applicant may request a temporary variance, petition the land use commission for a land use district boundary change, or initiate an administrative rule change to have the proposed use added to the identified land uses.]~~

~~[(e)]~~ (b) Identified land uses in the general subzone and their required permits (if applicable), are listed below:

~~[(1) Identified land uses beginning with letter (A) require no permit from the department or board;]~~

~~[(2)]~~ (1) Identified land uses ~~[beginning with letter (B)]~~ noted as SPA require a site plan approval by the department;

~~[(3)]~~ (2) Identified land uses ~~[beginning with letter (C)]~~ noted as DEP require a departmental permit; and

~~[(4)]~~ (3) Identified land uses ~~[beginning with letter (D)]~~ noted as BRD require a board permit, and where indicated, a management plan~~[-]~~ or coastal hazard mitigation disclosure statement.

G-1 OPEN SPACE

~~[(D-1)]~~ BRD-1 Land uses promoting natural open space and scenic value including those with accessory structures; provided, however, that no new golf courses shall be developed in the conservation district.

G-2 LAND USES NOT OTHERWISE IDENTIFIED

~~[(D-1)]~~ BRD-1 Land uses not otherwise identified in section 13-5-22, 13-5-23, or 13-5-24, which are consistent with the objectives of the general subzone. [Eff 12/12/94; am and comp 12/05/11; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

### §13-5-26 Identified land uses in the special

subzone. (a) Previously authorized land uses on a master plan or environmental document on file with the department require the approval of construction plans.

(b) Land uses not previously identified but which are consistent with the special subzone designation listed in Exhibit 3 entitled "Special Subzones: June 28, 2019" require site plan approval from the department.

(c) All other proposed land uses shall be reviewed by the department to determine if such land uses are potentially allowed or prohibited and whether a site plan approval, departmental permit, or a board permit would be required. [Eff and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

#### SUBCHAPTER 4

##### PROCEDURES FOR PERMITS, SITE PLAN APPROVALS, AND MANAGEMENT PLANS

**§13-5-30 Permits, generally.** (a) Land uses requiring comprehensive review by the board are processed as board permits, management plans, ~~[or]~~ comprehensive management plans, or coastal hazard mitigation disclosure statements ~~[temporary variances]~~. Departmental permits and emergency permits are processed by the department and approved by the chairperson. Site plans are processed by the department and approved by the chairperson or a designated representative. If there is any question regarding the type of permit required for a land use, an applicant ~~[may write to]~~ shall consult with the department to seek a determination on the type of permit or approval that is needed for a particular action.

(b) Unless authorized as provided in this chapter, land uses shall not be undertaken in the conservation district. The department shall regulate land uses in the conservation district by issuing one or more of the following approvals:

- (1) Departmental permit (see section 13-5-33);
- (2) Board permit (see section 13-5-34);

- (3) Emergency permit (see section 13-5-35);
- ~~[(4) Temporary variance (see section 13-5-36);]~~
- ~~[(5)]~~ (4) Site plan approval (see section 13-5-38);
- ~~[(6)]~~ (5) Management plan or comprehensive management plan (see section 13-5-39); or
- ~~[(7)]~~ (6) Coastal hazard mitigation disclosure statement (see section 13-5-39.5).

(c) Management plans or comprehensive management plans and coastal hazard mitigation disclosure statements shall be reviewed simultaneously with all other permits, when required.

~~[(c)]~~ (d) In evaluating the merits of a proposed land use, the department or board shall apply the following criteria:

- ~~[(1) The proposed land use is consistent with the purpose of the conservation district;~~
- ~~(2) The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur;~~
- ~~(3) The proposed land use complies with provisions and guidelines contained in chapter 205A, HRS, entitled "Coastal Zone Management", where applicable;~~
- ~~(4) The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community, or region;~~
- ~~(5) The proposed land use, including buildings, structures, and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels;~~
- ~~(6) The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable;~~
- ~~(7) Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and~~
- ~~(8) The proposed land use will not be materially detrimental to the public health, safety, and welfare.]~~

(1) General

- (A) The land use is consistent with the purpose and objectives of the subzone, and design standards of the conservation district;
- (B) The land use employs applicable best management practices and takes all practical measures to avoid or mitigate impacts to natural and cultural resources;
- (C) Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district; and
- (D) The land use complies with provisions and guidelines contained in chapter 205A, HRS, entitled "Coastal Zone Management", where applicable.

(2) Streams and Wetlands

- (A) The land use adheres to the State Water Code and its implementing administrative rules;
- (B) The land use will not result in the artificial channelization of a natural stream or impair stream resources, including important aquatic biota, riparian habitat of rare, threatened, or endangered species or of native-dominated vegetation, or recreational or scenic values;
- (C) The land use will not alter the alignment or flowrate of a stream or important wetland in any way which may degrade native species habitat;
- (D) The land use will not alter the natural floodplain of a stream or important wetland in a way which may adversely affect the stream alignment, or the configuration of the wetland; and
- (E) No grading, construction, or other land use which will likely affect stream flow will be approved within one hundred feet of the top of the stream bank or within

one hundred feet of an important wetland, provided that this standard may be increased or decreased by recommendation of the division of aquatic resources based on the character of the stream and the nature of the land use.

(3) Native Ecosystems and Endangered Species

- (A) The land use complies with the provisions and guidelines contained in chapter 195D section 4, HRS, entitled "Endangered species and threatened species;"
- (B) The land use will not degrade an area of native-dominated vegetation or enable invasion of habitat-modifying alien species; and
- (C) Landscaping and revegetation plans are appropriate to the Conservation District (e.g. use of indigenous and endemic species; xeriscaping in dry areas; minimizing ground disturbance; maintenance or restoration of the canopy; removal of invasive species; habitat restoration).

(4) Coastal Resources and Hazards

- (A) The land use will not degrade dune or beach resources, or inhibit shoreline access, except for a structure or use that conforms to a restoration program approved by the board;
- (B) The action will not increase the exposure of the land use to episodic hazards (e.g., floods, high waves, tsunami, and hurricanes), or chronic hazards (e.g., erosion and sea level rise);
- (C) The land use will not alter near shore wave or current patterns over the anticipated design lifespan unless such changes are the result of a beach restoration or coastal navigation

- project in which modeling demonstrates such changes are not detrimental to beach processes, public recreation, marine habitat, or coral ecosystems; and
- (D) The land use does not adversely affect coral reefs, marine mammals, sea turtles, anchialine ponds, or other important marine species.
- (5) Recreation and Access
- (A) The land use will not permanently interfere with public use of a public trail, access to public recreation areas, and beaches.
- (6) Scenic Resources
- (A) The land use will not significantly encroach upon public views of scenic monuments or natural or cultural landscapes which exhibit a high degree of visual intactness;
- (B) Structures and access roads are to be sited to minimize visibility from public viewpoints;
- (C) Building materials shall be earth tones, or compatible with surrounding colors to blend with the natural landscape; and
- (D) Structures shall not encroach onto or near the summit of a puu, ridge, scenic monument, or other prominent physiographic features.
- (7) Steep Slopes
- (A) Earth movement shall be minimized, and grading should generally follow existing contours;
- (B) The land use shall avoid, to the greatest extent possible, cut-and-fill and retaining walls;
- (C) Structures shall be of a post-and-beam construction, rather than slab-on-grade, to minimize benching; and
- (D) The land use shall be sited to maintain the natural drainage pattern.
- (8) Historic Resources

- (A) The land use complies with the provisions and guidelines contained in chapter 6E, HRS entitled "Historic Preservation Program."
- (9) Traditional and Cultural Practices and Resources
  - (A) The project has identified the identity and scope of cultural, historical, and natural resources in which traditional and customary Native Hawaiian rights are exercised in the area;
  - (B) The project has identified the extent to which those resources, including traditional and customary Native Hawaiian rights, will be affected or impaired by the proposed action; and
  - (C) The project has provided a set of mitigation commitments should there be potential adverse effect to cultural practices and resources.

The applicant shall have the burden of demonstrating that a proposed land use is consistent with the above criteria. [Eff 12/12/94; am and comp 12/05/11; am and comp \_\_\_\_\_] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-6)]

Note: For regulation of activities in:  
State Parks; see Chapter 13-146.  
Forest Reserves; see Chapter 13-104.  
Natural Area Reserves System; see Chapter 13-209.  
Unencumbered Lands; see Chapter 13-221.  
Marine Life Conservation Districts; see Title 13, Subtitle 4, Part 1.  
Marine Fisheries Management Areas; see Title 13, Subtitle 4, Part 2.  
Freshwater Fisheries Management Areas; see Title 13, Subtitle 4, Part 3.  
Ocean Waters, Navigable Streams and Beaches; see Title 13, Subtitle 11, Part 3.

**§13-5-31 Permit applications.** (a) Applications for all permits and approvals provided for in this chapter shall be submitted to the department on the form prescribed by the department. The application shall contain:

- (1) A draft or final environmental assessment, draft or final environmental impact statement, or proof of an exemption or request for an exemption from the chapter 343, HRS, process, as applicable;
- (2) Associated plans such as location map, site plan, floor plan, elevations, and landscaping plans drawn to scale;
- (3) ~~[The proposed land use shall address their]~~ A discussion of the proposal's relationship with county general plans and development plans;
- (4) Any other information as determined by the department;
- (5) Signature of the landowner;
- (6) Applicable fees;
- (7) ~~[A minimum of twenty copies (only one original copy required for site plan approvals) of the application and all attachments]~~ A statement (a) identifying cultural, historical, and natural resources, including traditional customary practices, that occur in the project area; (b) describing any potential impacts to these resources and practices; and (c) discussing feasible actions that can be taken to protect these resources and practices; and
- (8) A shoreline certification. The department may waive a certified shoreline when the applicant can provide evidence to the satisfaction of the department that the proposed land use is not subject to coastal hazards (e.g., shoreline erosion and wave inundation), or if a shoreline certification is unnecessary for determining shoreline setbacks. Factors to be considered shall

include but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, the history of coastal hazards in the area, and whether the proposed use will or will not adversely affect the beach process or interfere with public access or public views to and along the shoreline.

(b) For state and public lands, the State of Hawaii or government entity with management control over the parcel shall sign as landowner. For private lands with multiple landowners of the subject parcel ~~[(s)]~~, the application shall be signed by landowners whose property interests constitute or exceed eighty-five per cent of the fee ownership of the subject parcel ~~[(s)]~~.

(c) Except for state-owned land, any application submitted to the department pursuant to this chapter shall be reviewed by the department for completeness within thirty days from the date that the application was filed with the department. For applications including state-owned land, the department shall review the application for completeness within sixty days from the date the application was filed with the department. If it is found to be incomplete, the applicant shall be so notified by a letter stating the reasons therefor. If an application is accepted for processing, the applicant shall be notified by letter stating the commencement and completion dates for the processing of the application. The one hundred eighty-day time period provided by law shall not commence until a completed application is accepted by the department. Physical receipt of an application by the department does not constitute acceptance.

(d) If within one hundred eighty days, or a time period as provided by law, after the department's acceptance of a completed application, the department, the chairperson, or the board shall fail to render a decision thereon, the landowner may automatically put the land to the use or uses requested in the application, subject, however, to the conditions contained in section 13-5-42.

(e) No permit application shall be processed by the department or board until any violations pending against the subject parcel or the applicant are resolved.

(f) The burden of proving that a parcel of land is a kuleana rests with the applicant. The following information shall accompany an application in which the applicant is requesting nonconforming use of kuleana land as defined in this chapter:

- (1) Deed of property;
- (2) Land Commission Award (LCA) number;
- (3) Land Patent Grant documentation;
- (4) Documentation showing current ownership of the kuleana;
- (5) Tax map key number;
- (6) Documentation showing modern metes and bounds of the kuleana (if required by the department);
- (7) Identification of legal access to the kuleana; and
- (8) Identification of uses to which the kuleana land was historically, customarily, and actually found on the particular lot including, if applicable, a single-family residence. [Eff 12/12/94; am and comp 12/05/11; am and comp ]  
(Auth: HRS §183C-3) (Imp: HRS §§183C-5, 183C-6)

**§13-5-32 Fees.** Each application shall be accompanied by the filing fees specified in this chapter. All fees shall be in the form of certified or cashier's check, and payable to the State of Hawaii. The application fee for state projects shall be waived. The chairperson, upon request, may waive the filing fee for any application by a non-profit where the primary goal of the proposed project is to preserve and protect the natural or cultural resources of Hawaii. [Eff 12/12/94; am and comp 12/05/11; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

**§13-5-33 Departmental permits.** (a) Applications for departmental permits shall be submitted to the department in accordance with section 13-5-31.

(b) In those applications whose identified land uses require a combination of board permit~~[(s)]~~ and departmental permit~~[(s)]~~, a board permit shall be required covering all the proposed uses.

(c) The application for a departmental permit shall be accompanied by:

- (1) An application fee of \$250; and
- (2) A public hearing fee of \$250, plus publication costs, if applicable.

(d) A public hearing, if applicable, shall be held in accordance with section 13-5-40.

(e) The department shall provide notice of the application for a departmental permit through the publication of a notice in the office of environmental quality control (OEQC) bulletin. The OEQC disclosure shall identify:

- (1) Type of permit sought;
- (2) Applicant;
- (3) Location of affected land (by island, district, and tax map key number);
- (4) Preliminary environmental determination; and
- (5) A brief description of their proposed use, including specifically any proposed use of public lands.

(f) Interested persons who wish to comment upon or receive notice of the department's determination on a particular application shall submit their comments or written request for notification during the thirty-day comment period after the notice appears in the OEQC bulletin for a preliminary environmental determination. The request for notification shall include:

- (1) The name and address of the requestor;
- (2) The departmental permit for which the requestor would like to receive notice of departmental determination; and
- (3) The date the notice was published in the OEQC bulletin.

The department is not obligated to notify any person of its determination who does not strictly comply with this section. The department will use its best efforts to notify any interested person who complies with this section. However, failure of the department to comply with this subsection shall not invalidate any departmental permit issued under this chapter.

(g) The permit applicant or any person who has some property interest in the land, who lawfully resides on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the use that their interest is so clearly distinguishable from that of the general public may appeal the chairperson's decision by filing a written appeal to the department not later than fourteen days after the date of the department's determination of the departmental permit. The written appeal shall provide all relevant information and shall state with specificity the reasons for the appeal.

(h) Where the appellant under subsection (g) sets forth facts or law, or both, showing that the chairperson's decision is arbitrary and capricious, the board may affirm, amend, or reverse the decision of the chairperson, or order a contested case hearing or other procedure to be conducted prior to the board's decision on the appeal. All contested case hearings or other proceedings so ordered by the board shall be conducted in accordance with chapter 13-1.

(i) Except as provided in subsection (h), no contested case hearings shall be provided for departmental permits.

(j) A board permit shall be required when the chairperson determines that the scope of the proposed use or the public interest requires a board permit.

[Eff 12/12/94; am and comp 12/05/11; comp

]

] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-6)

**§13-5-34 Board permits.** (a) Applications for board permits shall be submitted to the department in accordance with section 13-5-31.

(b) A public hearing, if applicable, shall be held in accordance with section 13-5-40.

(c) The application for a board permit shall be accompanied by:

(1) The application fee which is equal to 2.5 per cent of the total project cost, but no less than \$250, up to a maximum of \$2,500; and

(2) A public hearing fee of \$250 plus publication costs, if applicable.

(d) Contested case hearings, if applicable, and as required by law, shall be held as provided in chapter 13-1. The aggrieved appellant or person who has demonstrated standing to contest the board action may request a contested case hearing pursuant to chapter 13-1. [Eff 12/12/94; am and comp 12/05/11; comp ]

] (Auth: HRS §183C-3) (Imp: HRS §183C-6)

#### **§13-5-35 Emergency permits. (a)**

Notwithstanding any provision of this chapter, the chairperson or deputy director of the department in the absence of the chairperson may authorize through an emergency permit any land use deemed to be essential to alleviate any emergency that is a threat to public health~~[7]~~ and safety, ~~[and welfare]~~ including natural resources, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the threat to public health ~~[7]~~ and safety, ~~[and welfare,]~~ including natural resources, is alleviated (e.g., erosion control, rockfall mitigation). The emergency action shall be designed and installed by a licensed contractor, and include contingencies for removal ~~[methods,]~~ and estimates for duration of the activity~~[7]~~ and future response plans if required by the department]. Emergency permits will not be authorized for shoreline erosion control except in response to situations where loss of an inhabited dwelling or public facility (e.g., road) critical to public health and safety is imminently threatened by an actively eroding shoreline. Emergency shoreline protection

approved under this section shall not remain for more than one year. The lifetime of an emergency shoreline protection structure approved under this section may only be extended for more than one year when the imminently dangerous situation has extended beyond the time period of an "emergency" and is classified as an "unmanaged hazardous condition." Proposals to extend the lifetime of an emergency shoreline protection structure approved under this section may be made through an application for temporary shoreline hardening under section 13-5-22 (P-15). Further, the provisions of this section (excepting shoreline armoring) shall not be applicable to an agency of the county, state, or federal government, or an independent non-governmental regulated public utility conducting repair, maintenance, or operation for a public purpose use, ~~[which shall have a letter (A) land use designation,]~~ provided that the public utility, or agency of the county, state, or federal government provides the department with a post-emergency repair report describing the work that was conducted within thirty days of the date of the emergency repair. Any emergency permit application is subject to the conditions of §13-5-6(c). (b) Where a natural disaster has occurred, such as a hurricane, flood, tsunami, volcanic eruption, earthquake, fire, or landslide, damaged structures and land uses may only be repaired or reconstructed in conformance with section 13-5-7 for nonconforming structures, or sections 13-5-22 (P-8) for existing structures or 13-5-22 (P-15) for shoreline hardening. The provisions of this section shall not be applicable to an agency of the county, state, or federal government, or an independent non-governmental regulated public utility conducting repairs or reconstruction of such structures and land uses for public purpose uses, ~~[which shall have a letter (A) land use designation,]~~ provided that the public utility, or agency of the county, state, or federal government provides the department with a post-disaster repair report describing the work that was conducted within thirty days of the date of the repair or reconstruction.

(c) If there is a question regarding the legality of a land use or structure, the burden of proof shall be upon the applicant. For nonconforming structures, this section shall not supersede the provisions contained in section 13-5-7.

(d) Repair and reconstruction of any structure or land use being investigated for possible violation of this chapter, or in situations in which fines for a violation have not been collected, shall not be processed until the violation is resolved.

(e) The application fee for an emergency permit shall be waived. [Eff 12/12/94; am and comp 12/05/11; am and comp ] (Auth: HRS §183C-3)  
(Imp: HRS §§183C-3, 183C-5, 183C-6)

~~§13-5-36 Temporary variance. (a) Notwithstanding any provision of this chapter to the contrary, the board may grant temporary variances from identified land uses when the board determines that:~~

- ~~(1) There are special and unique circumstances applying to the proposed land use at its particular location;~~
- ~~(2) The applicant proves with clear and compelling evidence that the proposed land use is for the benefit of public health and safety or that there are no other reasonable economic uses of the property;~~
- ~~(3) No reasonable and prudent alternative promotes the public interest as well as the proposed land use; and~~
- ~~(4) The variance and any conditions imposed on the land use authorized by the temporary variance is not inconsistent with the intent and purpose of the subzone in which the land use is located.~~

~~(b) No temporary variance shall be approved for more than one year, and no extension thereof or reapplication thereafter shall be approved.~~

~~(c) Temporary variances require a board permit.~~

~~(d) This section shall not apply to the removing, harvesting, dredging, mining, or extraction of any material or natural resource on land.~~

~~(e) The application for temporary variance shall be accompanied by:~~

~~(1) An application fee of \$250; and~~  
~~(2) A public hearing fee of \$250, plus publication costs, if applicable.]~~ [Eff 12/12/94; am and comp 12/05/11; R ] (Auth: HRS §183C-3) (Imp: HRS §183C-3, 183C-4)]

### **§13-5-37 REPEALED**

**§13-5-38 Site plan approvals.** (a) Where required, an applicant shall submit site plans, including construction, grading, site restoration, landscaping, fire protection, or any other plans to the department for its review and approval. All plans shall be approved by the department before they are submitted for approval by the pertinent state and county agencies.

(b) An application for a site plan approval shall be accompanied by an application fee of \$50.

(c) A departmental or board permit shall be required when the chairperson determines that the scope of the proposed use or the public interest requires a departmental or board permit. [Eff 12/12/94; am and comp 12/05/11; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-6)

**§13-5-39 Management plan approvals.** (a) Where required, management plans shall be submitted with the [board] permit application and shall include the requirements listed in Exhibit 4, entitled "Management Plan Requirements:[August 12, 2011]October 14, 2022", which is located at the end of this chapter and made a part of this section.

(b) The department or board may require the preparation of a comprehensive management plan where it

finds that further development may lead to significant natural, cultural, or ecological impacts within the conservation district. The geographic area, specific resources to be protected and conserved, and other content of a comprehensive management plan shall be determined by the department or board.

(c) ~~[An annual]~~ A report to the department related to the project schedule is required which shall include the status of compliance of the permit conditions, ~~[and the implementation of land uses pursuant to the approved management plan schedule]~~ implementation of project objectives, and a description of project inspection/monitoring observations. [Eff 12/12/94; am and comp 12/05/11; am and comp ]  
(Auth: HRS §183C-3) (Imp: HRS §183C-6)

§13-5-39.5 Coastal hazard mitigation disclosure statement. Where required, a hazard mitigation disclosure statement shall be submitted to the department or board and shall include the requirements listed in Exhibit 5, entitled "Hazard Mitigation Disclosure Statement Requirements: October 14, 2022," which is located at the end of this chapter and made a part of this section. [Eff and comp ]

**§13-5-40 Hearings.** (a) Public hearings shall be held:

- (1) On all applications for a proposed use of land for commercial purposes, (excluding site plan approvals);
- (2) On changes of subzone or boundary, establishment of a new subzone, changes in identified land use, or any amendment to this chapter;
- (3) On applications requiring a board permit in the protective subzone; and
- (4) On all applications determined by the chairperson that the scope of proposed use, or the public interest requires a public hearing on the application.

(b) The hearing shall be held in the county in which the land is located. The hearing may be conducted by the board or may be delegated to an agent or representative of the board as designated by the chairperson and shall afford all interested persons a reasonable opportunity to be heard.

(c) Notice of the hearing shall be given not less than twenty days prior to the date set for the hearing. Notice of the time and place of the hearing shall be published at least once in a newspaper of general circulation in the State and in the county in which the property is located. Notice of hearing on changes of subzone or boundary, establishment of a new subzone, changes in identified land use, or any amendment to this chapter shall be given not less than thirty days prior to the date set for the hearing during three successive weeks statewide and in the county in which the property is located.

(d) The department shall have the power to summon witnesses, administer oaths, and enjoy all other powers as authorized by law. [Eff 12/12/94; am and comp 12/05/11; comp ]  
] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-4, 183C-6)

**§13-5-41 Single-family residences.** (a) Single family residential uses approved by the board shall comply with the design standards contained in Exhibit [\[4\]6](#), entitled "Single Family Residential Standards: [\[August 12, 2011\]October 14, 2022](#)", located at the end of this chapter and made a part of this section, except as may be allowed by the board upon finding that prevailing conditions warrant the deviation from specific standards, and upon finding that the deviation is consistent with the criteria and conditions set forth in this chapter. Deviation from any of the standards shall be limited to fifteen per cent.

(b) Not more than one single-family residence shall be authorized within the conservation district on a legal lot of record.

(c) No single-family residence shall be allowed in the conservation district where there is an existing residence in a different state land use district zoned for residential, rural, or agricultural use on another portion of the same legal lot of record. [Eff 12/12/94; am 11/14/05; am and comp 12/05/11; am and comp ]  
] (Auth: HRS §183C-3) (Imp: HRS §183C-4)

~~§13-5-41.1 Fire buffer zone. Where requested by the department, fire buffer zones shall be established and shall include the requirements listed in Exhibit 5, entitled "Fire Buffer Zone Standards: August 12, 2011", which is located at the end of this chapter and made a part of this section.] [Eff and comp 12/05/11; R ] Auth: HRS §183C-3) (Imp: HRS §183C-4)]~~

**§13-5-42 Standard conditions.** (a) Any land use permitted within the conservation district is subject to the following standard conditions:

- (1) The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
- (2) The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
- (3) The permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;
- (4) The permittee shall comply with all applicable department of health administrative rules;

- (5) ~~[The] Transient rentals are prohibited.~~  
Additionally, the single-family residence shall not be used for rental or any other commercial purposes unless approved by the board~~[. Transient rentals are prohibited, with the exception of wilderness camps approved by the board];~~
- (6) The permittee shall provide documentation (e.g., book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
- (7) Before proceeding with any work authorized by the department or the board, the permittee shall submit ~~[four]~~ two hard copies and one digital copy of the construction plans and specifications (if required) to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. ~~[Three]~~ One of the hard copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;
- (8) Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the ~~[approval of such use]~~ issuance of the permit, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;
- (9) All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;

- (10) The permittee understands and agrees that the permit does not convey any vested right~~[(s)]~~ or exclusive privilege;
- (11) In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
- (12) When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the county department of water supply;
- (13) Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
- (14) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- (15) Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
- (16) Except in case of public highways, access roads shall be limited to a maximum of two lanes;
- (17) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
- (18) Cleared areas shall be revegetated, in accordance with landscaping guidelines provided in this chapter, within thirty days

- unless otherwise provided for in a plan on file with and approved by the department;
- (19) Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;
  - (20) Animal husbandry activities shall be limited to sustainable levels in accordance with good soil conservation and vegetation management practices;
  - (21) The permittee shall obtain a county building or grading permit or both ~~[for the use prior to final construction plan approval by the department]~~ and file the county permit with the department, including the post-construction Elevation Certificate if one was required;
  - (22) For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline ~~[as defined in section 205A-1, HRS];~~
  - (23) Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;
  - (24) Where applicable, provisions for protection of beaches and the primary coastal dune shall be established by the permittee, to the satisfaction of the department, including but not limited to avoidance, relocation, or other best management practices;
  - (25) The permittee acknowledges that the approved work shall not hamper, impede, or otherwise

limit the exercise of traditional, customary, or religious practices of Native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;

(26) For single-family residential development located on a parcel along the shoreline, the permittee shall file a restrictive covenant with the Bureau of Conveyances (or the assistant registrar of the land court, if the parcel is Land Court property) stipulating that shoreline hardening structures are prohibited, except that this prohibition shall not apply to structures that are part of a beach restoration program authorized by the board;

(27) For single family residential development exposed to coastal erosion and flooding, the permittee shall record a covenant with the Bureau of Conveyances (or the assistant registrar of the land court, if the parcel is Land Court property) holding the state harmless from any liability, claim, or demand for property damage resulting from the effects of coastal hazards on the property and its improvements;

(28) The property owner understands and acknowledges the risk associated with ownership of beachfront property along the coast of the Hawaiian Islands such that property may eventually, or suddenly, be lost to coastal erosion or marine inundation. When beachfront property recedes seaward and becomes part of the wet beach located seaward of the shoreline or submerged under the ocean, that property becomes part of the public trust; and

~~[-(26)-]~~ (29) Other terms and conditions as prescribed by the chairperson.

(b) Failure to comply with any of these conditions shall render a permit void under the

chapter, as determined by the chairperson or board.

(c) Deviation from any of the conditions, standards, or criteria provided in this chapter may be considered by the board, only when supported by a satisfactory written justification stating:

- (1) The deviation is necessary because of the lack of practical alternatives;
- (2) The deviation shall not result in any substantial adverse impacts to natural or cultural resources;
- (3) The deviation does not conflict with the objective of the subzone; ~~[and]~~
- (4) The deviation is not inconsistent with public health~~[,]~~ or safety~~[, or welfare]~~; and
- (5) The deviation does not increase exposure to natural hazards such as rock fall, shoreline erosion, flooding, and sea level rise.

Failure to secure board approval for a deviation before the deviation occurs constitutes cause for permit revocation. [Eff 12/12/94; am and comp 12/05/11; am and comp ] Auth: HRS §183C-3) (Imp: HRS §§183C-4, 183C-6)

**§13-5-43 Time extensions.** (a) Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

(b) Time extensions may be granted as determined by the department on all site plan approvals.

~~[(b)]~~ (c) Time extensions may be granted as determined by the chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant.

~~[(c)]~~ (d) Time extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant.

~~[(d)]~~ (e) Unless otherwise authorized, all time extensions shall be submitted to the department prior to the expiration deadline.

~~[(e)]~~ (f) If a time extension request is received after the expiration deadline, it shall be forwarded to the board for review. If a request for a time extension is not received within one year after the expiration deadline, the permit shall be void.

(g) Time extension requests shall be accompanied by a processing fee of twenty five dollars for site plan approvals and one hundred dollars for departmental and board permits.

~~[(f) Temporary variances are excluded from this provision.]~~ [Eff 12/12/94; am and comp 12/05/11; am and comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

**§13-5-44 Revocation of permits.** In any case where a permittee has failed to comply with one or more of the conditions contained in a permit, the board may direct the chairperson to revoke the permit. [Eff 12/12/94; am and comp 12/05/11; comp ] (Auth: HRS §183C-3) (Imp: HRS §§183C-3, 183C-7)

**§13-5-45 Severability.** The provisions of these rules are declared to be severable, and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected." [Eff 12/12/94; am and comp 12/05/11 comp ] (Auth: HRS §183C-3) (Imp: HRS §183C-3)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 13-5, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on \_\_\_\_\_ by the Board of Land and Natural Resources and filed with the Office of the Lieutenant Governor.

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SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING

*Lauren Chun*

Oct 5, 2022

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LAUREN CHUN  
Deputy Attorney General

## Exhibit 1

### Conservation District Violation Penalties Schedule: October 14, 2022

Guidelines and assessment of damages to public land or natural resources, relating to Act 217

#### **Introduction**

Hawaii Revised Statutes (HRS) §183C-7 was amended on July 7, 2008 to increase the maximum penalty for a Conservation District violation to up to \$15,000 per violation, in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof.

These guidelines are consistent with HAR §13-1, Subchapter 7, Civil Resource Violation System (CRVS).

#### **Conservation District Violation Penalties Schedule**

Staff will treat each case individually when assigning conservation district penalties using the following framework, and additional considerations and factors for upward or downward adjustments. The staff will use these guidelines to issue violation notices and to make recommendations to the Board of Land and Natural Resources (Board), Chairperson of the Board of Land and Natural Resources (Chairperson), or Presiding Officer, who may ultimately adjudicate the Conservation District penalties. The Chairperson, Board, or Presiding Officer may also assess administrative costs, damages to public land or natural resources, and costs associated with land or habitat restoration.

The penalty range for these actions will be initially determined based on the type of permit that would have been required under Chapter 13-5. For violations in which an unauthorized use is not identified in Chapter 13-5, staff may try to associate the action with the most similar identified land use in

the chapter or according to the "harm to the resource" caused by the violation.

Once the baseline for the penalty range has been established the penalty may be adjusted appropriately upward or downward according to the "harm to resource" caused or potentially caused by the violator's action and additional considerations and factors.

The initial violation penalty range associated with each required permit will be assessed in accordance with the following harm or potential harm to resources.

Table 1. Penalty Guideline Framework

<b>Harm or potential for harm to resource</b>	<b>Closest identified land use permit</b>	<b>Penalty range</b>
Major	Board	\$10,000-\$15,000
Moderate	Departmental	\$2,000-\$10,000
Minor	Site Plan	\$1,000-\$2,000
Very Minor	Site Plan	Up to \$1,000

Major harm to the resource / Board Permit

Violations may incur a penalty in the range of \$10,000 to \$15,000 as a Board permit would have been required to minimize the possibility of causing "major harm to the resource." Examples of "major harm to the resource" may include actions that cause substantial adverse impact to existing natural resources within the surrounding area, community, ecosystem or region, or damage to the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics. Such actions may include, but are not limited to, unauthorized single-family residences or unauthorized structures, grading or alteration of topographic features, aquaculture, major marine construction or dredging, unauthorized shoreline structures, major projects of any kind, mining and extraction, etc.

#### Moderate harm to the resource / Departmental Permit

Violations may incur a penalty in the range of \$2,000 to \$10,000, as a Departmental permit would have been required, due to the possibility of causing "moderate harm to the resource." Examples of "moderate harm to the resource" may be adverse impacts that degrade water resources, degrade native ecosystems and habitats, and/or alter the structure or function of a terrestrial, littoral or marine ecosystem. Such actions may include, but are not limited to, unauthorized landscaping causing ground disturbance, unauthorized alteration, renovation or demolition of existing structures or facilities, such as buildings and shoreline structures, maintenance dredging, agriculture, and animal husbandry, etc.

#### Minor harm to the resource / Site Plan Approval

Violations may incur penalties as a site plan approval would have been required to assure that "minor harm to the resource" are minimized. "Minor harm to the resource" may incur a penalty of \$1,000 to \$2,000 and could be actions causing limited to short-term direct impacts including, but not limited to, small-scaled construction, construction of accessory structures, installation of temporary or minor shoreline activities or similar uses.

#### Minor harm to the resource / Site Plan Approval

In instances in which a Site Plan Approval should have been sought but are considered to have only caused "very minor harm to resource" a penalty of up to \$1,000 may be incurred. These "very minor harm to the resource" could be actions in which the impact on the water resource or terrestrial, littoral or marine ecosystem was temporary or insignificant, and was not of a substantial nature either individually or cumulatively.

#### **Tree removal**

Violation penalties for the removal of any federal or state listed threatened, endangered, or commercially

valuable tree may incur a fine of up to \$15,000 per tree. Removal of any native tree may incur a fine of up to \$1,000 per tree. The removal of any invasive tree shall be considered as removal/clearing of vegetation.

The Board, Department, or Presiding Officer also has the option of considering the removal of more than one tree as a single violation. However, the removal of any federally or state listed threatened or endangered tree shall be considered on per tree basis, with a maximum penalty of up to \$15,000 per tree.

#### **Additional considerations and factors**

After Staff applies the Conservation District violation graduated penalty framework to identify the violation penalty range staff may incorporate several considerations into the final assessed conservation district penalty including but not limited to, those factors identified in HAR §13-1-70 Administrative Sanctions Schedule; Factors to be Considered.

#### **Continuing violations and permit non-compliance**

Each day during which a party continues to work or otherwise continues to violate conservation district laws, and after the Department has informed the violator of the offense by verbal or written notification, the party may be penalized up to \$15,000 per day by the Department for each separate offense.

Violation of existing approved Conservation District Use Permit (CDUP) conditions will be assessed on a case-by-case basis.

#### **In kind penalties**

Once the penalty amount has been established through the framework above, the Department may determine that the full payment or some portion of the penalty may be paid as an in-kind penalty project.

In-kind penalties will only be considered if the responsible party is a government entity, university, or school board, or if the responsible party is a private party proposing an environmental restoration, enhancement, information, or education project. In-kind penalties are limited to the following specific options:

- a. Material or labor support for environmental enhancement or restoration projects.
- b. Environmental Information and Environmental Education projects.
- c. Capital or facility improvements.
- d. Property. A responsible party may propose to donate land to the department as an in-kind penalty.

### **Assessment of damages**

Penalties to recoup damages to public lands or natural resources for the purposes of enforcement and remediation may also be assessed.

The cost of a full-scale damage assessment by the Department would be an administrative cost, which could be recouped by the Board from the landowner or offender pursuant to §HRS 183C-7.

The Board may allow restoration activities and damage penalties to be conducted or applied to a site different from the location of the damaged area where similar physical, biological or cultural functions exist. These assessed damages are independent of other, city, county, state and federal regulatory decisions and adjudications. Thus, the monetary remedies provided in HRS §183C-7 are cumulative and in addition to any other remedies allowed by law.

### **Primary restoration damages**

The cost of land or habitat restoration or replacement, the cost of site monitoring, and site management may be assessed and charged as primary restoration damages. Restoration efforts will aim to return the damaged ecosystem to a similar ecological

structure and function that existed prior to the violation. In cases in which the damaged ecosystem was predominately composed of non-native species, restoration efforts must re-vegetate Conservation District land and public lands with non-invasive species, preferably native and endemic species when possible. The use of native and endemic species may thus result in the restoration of ecological structure and function critical for the survival of endemic Hawaiian species.

### **Compensatory damage calculation**

Compensatory damages to public lands or natural resources may be assessed and charged to the violator to compensate for ecosystem damage and lost initial and interim ecosystem services to the public. All Divisions of the Department may coordinate their resources and efforts along with existing ecosystem valuations and publications to derive the estimated total value of the natural resource damaged until the ecosystem structure, function, and services are estimated to be recovered.

### **Adjudication of damages**

The adjudication of primary restoration damages and compensatory damages will be adjudicated by the Board due to the complexity of the assessment process and to assure proper checks and balances, including adequate public notice and a public hearing.

In addition to the damages and penalty violations assessed, the Department is allowed to recoup all administrative costs associated with the alleged violation pursuant to HRS §183C-7(b). All penalties assessed will be in compliance with HRS §183C-7(c) and will not prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices.

Exhibit 2, Subzone Designations: June 28, 2019

- (1) "H-1, Makalawena," Hawaii, June 4, 1978
- (2) "H-2, Keahole Point," Hawaii, August 23, 1985
- (3) "H-3, Mahukona," Hawaii, August 23, 1985
- (4) "H-4, Keawanui Bay," Hawaii, June 4, 1978
- (5) "H-5, Anaehoomalu," Hawaii, June 4, 1978
- (6) "H-6, Kiholo," Hawaii, August 23, 1985
- (7) "H-7, Kailua," Hawaii, August 12, 2011
- (8) "H-8, Kealakekua," Hawaii, June 4, 1978
- (9) "H-9, Honaunau," Hawaii, August 22, 2014
- (10) "H-10, Kauluoa Point," Hawaii, June 4, 1978
- (11) "H-11, Milolii," Hawaii, August 23, 1985
- (12) "H-12, Manuka Bay," Hawaii, June 4, 1978
- (13) "H-13, Hawi," Hawaii, June 4, 1978
- (14) "H-14, Kawaihae," Hawaii, June 4, 1978
- (15) "H-15, Puu Hinai," Hawaii, June 4, 1978
- (16) "H-16, Puu Anahulu," Hawaii, June 4, 1978
- (17) "H-17, Hualalai," Hawaii, June 4, 1978
- (18) "H-18, Puu Lehua," Hawaii, June 4, 1978
- (19) "H-19, Kaunene," Hawaii, June 4, 1978
- (20) "H-20, Puu Pohakuloa," Hawaii, August 12, 2011
- (21) "H-21, Papa," Hawaii, August 12, 2011
- (22) "H-22, Pohue Bay," Hawaii, August 23, 1985
- (23) "H-23, Puu Hou," Hawaii, June 4, 1978
- (24) "H-24, Honokane," Hawaii, June 4, 1978
- (25) "H-25, Kamuela," Hawaii, June 4, 1978
- (26) "H-26, Nohoaoahae," Hawaii, June 4, 1978
- (27) "H-27, Keamuku," Hawaii, June 4, 1978
- (28) "H-28, Naohueleehua," Hawaii, August 23, 1985
- (29) "H-29, Puu O Uo," Hawaii, August 23, 1985
- (30) "H-30, Sulphur Cone," Hawaii, August 23, 1985
- (31) "H-31, Alika Cone," Hawaii, June 4, 1978
- (32) "H-32, Puu o Keokeo," Hawaii, June 4, 1978
- (33) "H-33, Kahuku Ranch," Hawaii, June 4, 1978
- (34) "H-34, Ka Lae," Hawaii, June 4, 1978
- (35) "H-35, Kukuihaele," Hawaii, June 4, 1978
- (36) "H-36, Makahalau," Hawaii, June 4, 1978
- (37) "H-37, Ahumoa," Hawaii, June 4, 1978
- (38) "H-38, Puu Koli," Hawaii, June 4, 1978
- (39) "H-39, Kokoolau," Hawaii, June 4, 1978
- (40) "H-40, Mauna Loa," Hawaii, June 4, 1978
- (41) "H-41, Keaiwa Reservoir," Hawaii, June 4, 1978

- (42) "H-42, Punaluu," Hawaii, August 12, 2011
- (43) "H-43, Naalehu," Hawaii, August 12, 2011
- (44) "H-44, Honokaa," Hawaii, June 4, 1978
- (45) "H-45, Umikoa," Hawaii, June 4, 1978
- (46) "H-46, Mauna Kea," Hawaii, June 4, 1978
- (47) "H-47, Puu Oo," Hawaii, June 4, 1978
- (48) "H-48, Puu Ulaula," Hawaii, June 4, 1978
- (49) "H-49, Kipuka Pakekake," Hawaii, June 4, 1978
- (50) "H-50, Wood Valley," Hawaii, June 4, 1978
- (51) "H-51, Pahala," Hawaii, June 4, 1978
- (52) "H-52, Kukaiaua," Hawaii, June 4, 1978
- (53) "H-53, Keanakolu," Hawaii, June 4, 1978
- (54) "H-54, Puu Akala," Hawaii, June 4, 1978
- (55) "H-55, Upper Piihonua," Hawaii, June 4, 1978
- (56) "H-56, Kulani," Hawaii, June 4, 1978
- (57) "H-57, Kilauea Crater," Hawaii, August 23, 1985
- (58) "H-58, Kau Desert," Hawaii, June 4, 1978
- (59) "H-59, Naliikakani Point," Hawaii, June 4, 1978
- (60) "H-60, Papaaloa," Hawaii, October 22, 1993
- (61) "H-61, Akaka Falls," Hawaii, November 23, 1987
- (62) "H-62, Piihonua," Hawaii, June 4, 1978
- (63) "H-63, Puu Makaala," Hawaii, June 4, 1978
- (64) "H-64, Volcano," Hawaii, June 4, 1978
- (65) "H-65, Makaopuhi Crater," Hawaii, June 4, 1978
- (66) "H-66, Papaikou," Hawaii, June 4, 1978
- (67) "H-67, Hilo," Hawaii, June 4, 1978
- (68) "H-68, Mountain View," Hawaii, June 4, 1978
- (69) "H-69, Kalalua," Hawaii, June 4, 1978
- (70) "H-70, Kalapana," Hawaii, August 23, 1985
- (71) "H-71, Keaau Ranch," Hawaii, June 4, 1978
- (72) "H-72, Pahoa North," Hawaii, June 4, 1978
- (73) "H-73, Pahoa South," Hawaii, June 4, 1978
- (74) "H-74, Kapoho," Hawaii, June 4, 1978
- (75) "M-1, Honolua," Maui, June 4, 1978
- (76) "M-2, Lahaina," Maui, June 4, 1978
- (77) "M-3, Olowalu," Maui, June 4, 1978
- (78) "M-4, Kahakuloa," Maui, June 4, 1978
- (79) "M-5, Wailuku," Maui, August 12, 2011
- (80) "M-6, Maalaea," Maui, June 4, 1978
- (81) "M-7, Paia," Maui, June 4, 1978
- (82) "M-8, Puu O Kali," Maui, June 4, 1978
- (83) "M-9, Makena," Maui, June 4, 1978
- (84) "M-10, Haiku," Maui, August 12, 2011

- (85) "M-11, Kilohana," Maui, August 23, 1985
- (86) "M-12, Lualailua," Maui, June 4, 1978
- (87) "M-13, Keanae," Maui, June 4, 1978
- (88) "M-14, Nahiku," Maui, June 4, 1978
- (89) "M-15, Kaupo," Maui, August 12, 2011
- (90) "M-16, Hana," Maui, August 23, 1985
- (91) "M-17, Kipahulu," Maui, July 25, 1988
- (92) "Mo-1, Ilio Point," Molokai, June 4, 1978
- (93) "Mo-2, Molokai Airport," August 23, 1985
- (94) "Mo-3, Kaunakakai," Molokai, August 23, 1985
- (95) "Mo-4, Kamalo," Molokai, June 4, 1978
- (96) "Mo-5, Halawa," Molokai, June 4, 1978
- (97) "Lanai," June 4, 1978
- (98) "Kahoolawe," June 4, 1978
- (99) "O-1, Kaena," Oahu, August 12, 2011
- (100) "O-2, Waianae," Oahu, December 13, 2002
- (101) "O-3, Waimea," Oahu, January 27, 2011
- (102) "O-4, Haleiwa," Oahu, August 23, 1985
- (103) "O-5, Schofield Barracks," Oahu, June 4, 1978
- (104) "O-6, Ewa," Oahu, June 4, 1978
- (105) "O-7, Kahuku," Oahu, June 4, 1978
- (106) "O-8, Hauula," Oahu, June 4, 1978
- (107) "O-9, Waipahu," Oahu, June 4, 1978
- (108) "O-10, Puuloa," Oahu, August 23, 1985
- (109) "O-11, Kahana," Oahu, March 24, 1994
- (110) "O-12, Kaneohe," Oahu, June 28, 2019
- (111) "O-13, Honolulu," Oahu, August 12, 2011
- (112) "O-14, Mokapu," Oahu, August 23, 1985
- (113) "O-15, Koko Head," Oahu, August 12, 2011
- (114) "K-1, Makaha Point," Kauai, June 4, 1978
- (115) "K-2, Kekaha," Kauai, June 4, 1978
- (116) "K-3, Haena," Kauai, August 12, 1992
- (117) "K-4, Waimea Canyon," Kauai, June 4, 1978
- (118) "K-5, Hanapepe," Kauai, June 4, 1978
- (119) "K-6, Hanalei," Kauai, June 4, 1978
- (120) "K-7, Waialeale," Kauai, June 4, 1978
- (121) "K-8, Koloa," Kauai, April 26, 2013
- (122) "K-9, Anahola," Kauai, June 9, 2006
- (123) "K-10, Kapaa," Kauai, June 9, 2006
- (124) "K-11, Lihue," Kauai, August 23, 1985

Exhibit 3

Special Subzones: June 28, 2019

- (1) Haka site special subzone. Subzone designation for cemetery purposes as delineated on map entitled "O-12, Kaneohe," Oahu;
- (2) Kapakahi Ridge special subzone. Subzone designation for nursing or convalescent home purposes as delineated on map entitled "O-13, Honolulu," Oahu;
- (3) Sea Life park special subzone. Subzone designation for recreational, educational, commercial purposes as delineated on map entitled "O-15, Koko Head," Oahu;
- (4) Milolii-Hoopuloa special subzone. Subzone designation for Milolii-Hoopuloa fishing village purposes including fishing activities, residential, educational, cultural and recreational uses pursuant to Act 86, SLH 1991, as delineated on map entitled "H-11, Milolii," Hawaii;
- (5) Hale O Ho'oponopono special subzone. Subzone designation for educational purposes as delineated on map entitled "H-9, Honaunau," Hawaii;
- (6) Limahuli Valley special subzone. Subzone designation for educational, recreational, and research purposes as delineated on map entitled "K-3, Haena," Kauai.
- (7) Lawai Kai special subzone. Subzone designation for educational, recreational, and research purposes as delineated on map entitled "K-8, Koloa," Kauai.

Exhibit 4

Management Plan Requirements: October 14, 2022

- 1 General description of the proposed use (e.g., forestry, fishpond, astronomy, aquaculture, agriculture).
- 2 Project location (e.g., island map, location map, site plan (drawn to scale)).
- 3 Natural hazard assessment, including descriptive information of coastal and upland erosion, flooding, slope, tsunami, sea level rise, and seismic and volcanic hazards, where applicable.
- 4 A description of best management practices used during project construction and implementation (e.g., mitigation measures).
- 5 A description of the best management practices to be used during the lifetime of the project (e.g., long-term management goals).
- 6 Project schedule including description of project sequencing from project construction to project completion, including a description and timing of natural resource monitoring, maintenance plans and a description of the reporting or inspection requirements.
- 7 Any other information or data, as required by the department.

Exhibit 5

Coastal Hazard Mitigation Disclosure Statement:

October 14, 2022

If the proposed land use lies within the Sea Level Rise Exposure Area (SLR-XA) or coastal high hazard area, an applicant will be required to submit a coastal hazard disclosure statement.

The discussion of coastal hazards will require consideration of siting and design for projected hazard exposure for a minimum of 3.2 feet of sea level rise, and for public infrastructure projects consideration of a minimum of 6.0 feet of sea level rise, or following succeeding guidance from the Hawaii Climate Change Mitigation and Adaptation Commission and / or County guidance, whichever is greater. The discussion should demonstrate awareness that flooding and erosion can emanate from various sources that include but may not be limited to high tide flooding, high wave over-wash, groundwater rise, rainfall flooding, and drainage failure. Further, the discussion should consider the progressive increase in frequency and severity of high tide flooding events that will affect coastal areas decades prior to the manifestation of chronic or continuous flooding from projected global mean sea level rise.

A description of the land use and identification and description of the coastal hazards that have historically impacted the project area, or which may potentially impact the project site in the future, including both episodic hazards (e.g., floods, high waves, tsunami and hurricanes) or chronic hazards (e.g., erosion and sea level rise), and any previous or existing measures installed in response to coastal flooding or erosion (e.g., temporary erosion control structures).

A discussion of potential property damage and plans for adaption to avoid or minimize the impact of hazards, minimize impacts to natural and cultural resources, and minimize impacts to public access.

For each coastal hazard identified, include a discussion of previous impacts and potential impacts over the expected lifespan of the proposed land use as well as proposed design features that would minimize or mitigate property damage and minimize or mitigate impacts to natural and cultural resources. The discussion should minimally include information from the latest Hawaii Sea Level Rise Vulnerability and Adaptation Report, published in accordance with HRS § 225P-3(n), or its successor, including locally relevant maps, maps of flood hazard areas, and historical shoreline erosion studies (where available). Features of the project that minimize or mitigate coastal hazards, may include but are not limited to, consideration of more conservative shoreline setbacks, elevating habitable structures on bedrock-fastened pilings above minimum requirements for special flood hazard areas but outside of erosion hazard areas, dry-flood proofing lower levels of structures, and avoiding installation of unsealed infrastructure below base flood elevation.

Adaptation must be considered which may include a conceptual timeline with discrete actions with triggers (e.g., recurring flooding impacts or land loss to erosion) to adapt to sea level rise. Adaptation should consider relocation of development to areas outside the Sea Level Rise Exposure Area or coastal high hazard areas, abandonment, or flood protection (e.g., elevating land or structures, armoring), provided flood protection does not adversely impact adjacent properties and development and does not adversely impact natural and cultural resources, such as beaches and public access.

## Exhibit 6

Single Family Residential Standards: October 14, 2022

### **Minimum Setback**

For lots under one acre:

Front: Fifteen feet  
Sides: Fifteen feet  
Back: Fifteen feet

For lots over one acre:

Front: Twenty-five feet  
Sides: Twenty-five feet  
Back: Twenty-five feet

Allowable building area extensions (e.g., eaves and cantilevered decks) are thirty-six inches with a fifteen-foot setback and forty-two inches with a twenty-five-foot setback.

Site characteristics and lot shape may be a factor in adjusting minimum setbacks when so determined by the board.

### **Properties Vulnerable to Coastal Hazards**

Structures shall be of a post-and-beam or post-on-pier construction, rather than slab-on-grade, in the Sea Level Rise Exposure Area or coastal high hazard area.

The maximum developable area in the Sea Level Rise Exposure Area or coastal high hazard areas shall not exceed two thousand five hundred square feet.

Single-family residences will not be permitted within the Sea Level Rise Exposure Area when there are buildable areas on the same parcel which are outside the Sea Level Rise Exposure Area or coastal high hazard areas.

### **Shoreline Setback**

The shoreline setback line shall be established based on a setback distance from the certified shoreline of sixty feet plus seventy times the average annual shoreline change rate, based on a historical shoreline change study as defined in this chapter. No shoreline setback shall be established for any lot subject to this chapter unless the application for a shoreline setback line includes a shoreline survey certified by the department not more than twelve months prior to submission of the permit

application. The shoreline setback line shall be based on the average lot depth (ALD)<sup>1</sup> measured from the current shoreline.

For lots with an average lot depth of two hundred feet or less, the shoreline setback line shall be established based on the average lot depth of the lot, as provided in Table 1, or based on sixty feet plus seventy times the annual erosion rate. The applicant may choose the lesser of the two methods, but in no case shall the shoreline setback line be calculated to be less than sixty feet.

For property located within the Sea Level Rise Exposure Area or coastal high hazard areas, where there exists sufficient lot depth and elevation, the department may require larger setbacks than the minimum setbacks established in this chapter.

The department may waive the requirement for a historical shoreline change study based on supportive documentation from the applicant. Such documentation may include, but is not limited to, county or state approved coastal erosion rate data provided through the University of Hawaii, School of Ocean, Earth Science, and Technology, or evidence that the erosion rate is zero.

Table 1: Average lot depth

If the average lot depth is:	100 to 140 feet	141 to 160 feet	161 to 180 feet	181 to 200 feet
Then the minimum setback distance is:	60 feet	70 feet	80 feet	90 feet

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<sup>1</sup> Average lot depth (ALD) shall be calculated as follows: (1) measure the two sides of the property that are at or near right angles to the shoreline; (2) measure the length of a line connecting the mid-point of the seaward (shoreline) side of the property to the mid-point of the landward side of the property; (3) add these three (right, left, center lines) measurements together for a total; (4) divide the total by three to obtain the ALD.

**Maximum Developable Area (MDA)**

Means the total floor area in square feet allowed under the approved land use. The floor area computation shall include: all floor areas under roof, including first, second, and third story areas, lanai, decks, pools and associated pool decks, saunas, garage or carport, and other above ground structures such as equipment buildings and sheds.

For lots up to fourteen thousand square feet, the maximum developable area is twenty-five per cent of total lot area, and not to exceed one thousand five hundred square feet.

For lots over fourteen thousand square feet to one acre, the maximum developable area is two thousand five hundred square feet.

For lots larger than one acre, the maximum developable area is three thousand five hundred square feet.

The maximum developable area shall be reduced by thirty percent on parcels where the general slope is between twenty percent and thirty percent. Single-family residences will not be permitted on parcels where the general slope is greater than thirty percent.

Site characteristics and the degree of pre-existing site disturbance may be a further limiting factor in the calculation of maximum developable area when so determined by the board.

**Maximum Allowable Building Elevation**

No portion of any building (excluding any allowed chimney, antenna, vents, solar panels or other renewable energy structures, or similar structures) shall protrude above the maximum allowable building elevation. The top of the maximum allowable building elevation shall be measured from the lowest part of the structure's foundation at natural grade and at the highest point of the structure's roof.

Areas within the flood zone may allow consideration for additional heights above the maximum allowable building elevation to comply with the National Flood Insurance Program requirements or county floodplain management regulations (whichever are more stringent) when so determined by the board.

## Compatibility Provisions

A residence will be compatible with the surrounding environs and designed according to the following criteria:

1. The residence is not designed to allow for independent subunits;
2. Landscaping is appropriate to the area, and is used to screen structures from public view planes;
3. The project complies with all State Department of Health regulations;
4. Grading/contouring of property is kept to a minimum with consideration of existing slope, storm water management, and erosion;
5. All structures connected, or best alternative that minimizes disturbed land area;
6. In conformance to applicable building and grading code and shoreline setback provisions; and
7. The residence contains no more than one kitchen<sup>2</sup>

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<sup>2</sup> "Kitchen" means a facility within the residential dwelling for food preparation, including fixtures, appliances or other devices to wash, prepare, heat, cook, and refrigerate food and wash cooking utensils and dining implements.

## Exhibit 7

Hoala Loko Ia Program Standards: October 14, 2022

### **Purpose**

The purpose of the Hoala Loko Ia Program is to streamline the permitting process for the repair, restoration, maintenance, and operation of traditional fishpond systems in Hawaii.

### **Eligibility**

The program is open to any fishpond system in the Conservation District, whether existing or historic, whose work plan is in compliance with the Final Environmental Assessment and Finding of No Significant Impact published in October 2013 titled "Statewide Programmatic General Permit and Programmatic Agreement for the restoration, repair, maintenance and reconstruction of traditional Hawaiian fishpond systems across Hawaii."

### **Permit Processing**

The Office of Conservation and Coastal Lands will assign completed applications to one of two tiers for processing.

#### **Tier 1**

The first tier encompasses the minor repair, restoration, maintenance and operation of existing fishponds. OCCL will issue the permit to the applicant along with general conditions, monitoring protocols, and best management practices, and provide notice of the permit to cooperating agencies.

Activities that will be covered by a Tier 1 permit include:

1. Repair, restoration, maintenance, and operation of fishpond walls and sluice gates, including but not limited to the placement, movement, manipulation and temporary stockpiling of necessary materials;
2. Placement, movement, manipulation and temporary stockpiling of small stones or rubble for interior wall fill (iliili);
3. Silt removal by hand or mechanized equipment from within fishponds to restore original fishpond depth;
4. Vegetation removal by hand and/or mechanized equipment from within fishponds and from fishpond walls;

5. Periodic post-restoration maintenance activities required to facilitate the long-term use, management and operation of fishponds;
6. Use of hand or mechanized equipment to conduct fishpond restoration activities;
7. Placement of temporary structures within fishponds, which are necessary to conduct restoration;
8. Placement and use of aquaculture pens, nets, or cages within fishponds; and
9. Use of harvesting equipment within fishponds.
10. Clearing of auwai, or traditional waterways, to allow for restoration of fresh water flow into the loko ia, thus restoring functional integrity and ecosystem services;
11. Removal of invasive species from loko ia that diminish oxygen and other ecosystem services to the pond system;
12. Restoration of punawai, wai hu, waipuna, kele, ele, kahawai or other fresh water sources for the purpose of restoring functional integrity to the system and ecosystem services; or
13. Stocking and breeding native species of flora and fauna using traditional methods for the purpose of restoring functional integrity and ecosystem services to the system.
14. Construction of accessory structures

## **Tier 2**

The second tier encompasses moderate to major repair of existing fishponds. OCCL will forward the application to appropriate resource agencies and community groups for review. Reviewers will be able to concur with the standard conditions, request additional information from the applicant, seek additional consultation with subject matter area experts, or identify additional and or site-specific conditions, protocols, and best management practices. Once the process is complete OCCL will forward the application to the Chair of the Board of Land and Natural Resources, who will have the final authority to approve, modify, or deny the permit.

Activities that will be covered by a Tier 2 permit include:

1. Restoration work that involves a change of more than ten percent of the dimensions of the historic structure;
2. Utilizing rocks from off-site;
3. Dredging with the use of mechanized equipment;
4. Any activity that may moderately affect or alter sandy beaches or sediment deposition; and
5. Activities that might require an Incidental Take Permit or Habitat Conservation Plan.

## **Exclusions**

Activities that are explicitly excluded from authorization or consideration under the program are those projects that utilize any of the following:

1. Blasting;
2. Pile-driving, pre-drilling for pile-driving;
3. Activities that penetrate the pond floor;
4. New construction or dredging or in-water trenching not related to original fishpond structure/function;
5. Construction of new or expanded effluent discharge systems;
6. Construction of new bank stabilization structures;
7. Exploration or construction within estuaries or the marine environment that cannot be conducted from a work vessel or an existing bridge, dock, or wharf;
8. Any use of treated wood in marine or aquatic habitats (other than pressure-treated);
9. Actions determined for any reason by the technical advisory team to have a significant adverse environmental or cultural impact;
10. Use of chemicals inside or outside the fishpond to control or capture organisms;
11. Use of live rock or coral to construct or repair fishpond walls or other features; and
12. Actions that would cause extreme turbidity, purposeful damage to live rock or coral, extreme eutrophication, or other long-term impairment to water quality.